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 Part 1040

[Docket No. AO–225–A45–R01; DA–92–10]

Milk in the Southern Michigan Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision adopts a multiple component pricing (MCP) plan in the Southern Michigan Federal milk order. The three components to be priced are butterfat, protein, and a ''fluid carrier'' residual. The proposed plan includes adjustments to the producer protein price based on the somatic cell count of producer milk. The decision also adopts changes in qualifying shipments from pool supply plants and gives the market administrator the authority to adjust the monthly shipping percentage requirements for both proprietary and cooperative supply plants or units of supply plants. In addition, the maximum allowable administrative and marketing service assessment rates are increased to 4 and 7 cents, respectively. The amendments are based on industry proposals considered at public hearings held during February 1993 and March 1994 in Novi, Michigan, and in Grand Rapids, Michigan, respectively.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7183.

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.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued December 3, 1992; published December 10, 1992 (57 FR 58418).

Supplemental Notice of Hearing: Issued January 19, 1993; published January 29, 1993 (58 FR 6447).

Recommended Decision: Issued November 29, 1993; published December 6, 1993 (58 FR 64176).

Notice of Reopened Hearing: Issued February 18, 1994; published February 24, 1994 (59 FR 8874).

Extension of Time for Filing Briefs: Issued April 6, 1994; published April 13, 1994 (59 FR 17497).

Emergency Partial Final Decision: Issued May 12, 1994; published May 23, 1994 (59 FR 26603).

Final Rule: Issued June 22, 1994; published June 29, 1994 (59 FR 33418).

Revised Recommended Decision: Issued December 2, 1994; published December 14, 1994 (59 FR 64464).

Extension of Time for Filing Exceptions: Issued January 18, 1995; published January 24, 1995 (60 FR 4571).

Preliminary Statement

Public hearings were held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Southern Michigan marketing area. The hearings were held, 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 (7 CFR Part 900), at Novi, Michigan, on February 17–18, 1993, and at Grand Rapids, Michigan, on March 1, 1994. The February 1993 hearing was held pursuant to a notice of hearing issued December 3, 1992 (57 FR 58418), and a supplemental notice of hearing issued January 19, 1993 (58 FR 6447). The March 1994 reopened hearing was held pursuant to a notice of hearing issued February 18, 1994 (59 FR 8874).

Upon the basis of the evidence introduced at the February 1993 hearing and the record thereof, the Administrator, on November 29, 1993, issued a recommended decision containing notice of the opportunity to file written exceptions thereto. The proceeding was reopened; an emergency decision and final rule pertaining to the ''lock-in'' provision (Issues 7 and 8) were published on May 23, 1994 (59 FR 26603) and June 29, 1994 (59 FR 33418), respectively. On December 2, 1994, the Administrator issued a revised recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under Issue 2, one sentence is added in paragraph 1, one paragraph is added after paragraph 7, paragraph 13 is revised, and one paragraph is added after paragraph 13.

2. Under Issue 3, two sentences are added to paragraph 2, two paragraphs are added after paragraph 46, the fourth sentence of paragraph 47 is revised, one paragraph is added after paragraph 47, one paragraph is added after paragraph 56, one paragraph is added after paragraph 69, one sentence is added after the third sentence of paragraph 70, the last sentence of paragraph 70 is revised, one paragraph is added after paragraph 71, two paragraphs are added after paragraph 72, one paragraph is added after paragraph 74, one paragraph is added after paragraph 78, one sentence is added after the first sentence of paragraph 87, one sentence is added at the end of paragraph 89, and three sentences are added at the end of paragraph 90.

3. Under Issue 4, paragraph 1 is revised, the third sentence of paragraph 3 is revised, the first sentence of paragraph 33 is modified, ten paragraphs are added after paragraph 41, the second sentence of paragraph 42 is deleted, three paragraphs are added after paragraph 42, paragraph 45 is revised, one paragraph is added after paragraph 45, one paragraph is added after paragraph 50, four paragraphs are added after the table following paragraph 50, paragraphs 51, 52, 53, and 54 are deleted, paragraph 58 is revised, and one paragraph is added after paragraph 58.

4. Under Issue 9, paragraph 1 is revised, two paragraphs are added after paragraph 1, the second sentence of paragraph 3 is revised, five paragraphs are added after paragraph 3, paragraph 4 is deleted, paragraph 5 is revised, and one paragraph is added after paragraph 5.

5. Throughout this proposed rule, non-substantive changes to the revised recommended decision, such as referring to Michigan Milk Producers Associations as MMPA, were made to increase consistency.

The material issues on the record of the hearing relate to:

1. Pool supply plant definition.
2. Modification of cooperative pool supply plant shipping requirement by market administrator.
3. Multiple component pricing.
4. Somatic cell adjustment.
5. Administrative assessment.
6. Marketing service assessment.
7. Pool distributing plant definition (UHT plant ''lock-in'').
8. Emergency action with respect to Issue 7.
9. Conforming changes.

No comments were received in response to the November 1993 recommended decision regarding the pool supply plant definition, administrative assessment, and marketing service assessment provisions (Issues 1, 5, and 6, respectively) that were considered at the initial 1993 hearing. Therefore, this decision contains no changes regarding those issues from the decisions published December 6, 1993 (58 FR 64176), and December 14, 1994 (59 FR 64464).

Issues 2, 3, 4, and 9 were addressed in the reopened hearing on March 1, 1994, and discussed in the revised recommended decision. Comments on the revised recommended decision were received regarding modification of the pool supply plant shipping standard, multiple component pricing, and somatic cell adjustment (Issues 2, 3, and 4, respectively). The comments are summarized and addressed under the appropriate issue. The discussion of Issue 3, multiple component pricing, is revised to reflect comments received and responses to those comments. The conclusions of Issue 3 remain as recommended in the revised decision. Based on comments received and reexamination of the hearing record, Issues 2 and 4 are revised in this final decision. Issue 9, conforming changes, has been revised to reflect changes in the decision regarding Issues 2 and 4.

Issues 7 and 8 were addressed in an emergency partial final decision issued May 12, 1994, and the resulting final order amendments were made effective for June 1994. The amendments were issued June 22, 1994, and published June 29, 1994 (59 FR 33418).

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool supply plant definition. A witness for Michigan Milk Producers Association (MMPA) testified during the initial hearing in support of the cooperative's proposal which would amend the pool supply plant definition to include as qualifying shipments transfers of milk to a partially regulated distributing plant. The witness testified that MMPA supplies bulk milk to a local partially regulated distributing plant that has substantial Class I and Class II utilization but receives no credit for such sales toward fulfilling the pool supply plant shipping requirement. The witness explained that the shipment is a bulk transfer from the cooperative (MMPA) to the nonpool plant, with its classification determined during the pooling process. MMPA's post-hearing brief contended that adoption of the proposed amendment would eliminate the inequity caused by such transfers.

According to the cooperative's brief, the current month's marketwide Class I utilization percentage, which includes the portion of the transfer classified as Class I, determines the minimum qualifying shipping requirement for the same month of the following year but does not contribute to the cooperative's Class I use in determining whether pooling standards have been met.

The MMPA witness testified that the partially regulated plant historically had been a pool distributing plant but recently had become involved in the production of extended-life Class II products. As a result, he stated, the plant now has Class I utilization of approximately 40 percent. According to the witness, the partially regulated plant to which MMPA transfers milk is the only such plant to which the proposed amendment would apply. A post-hearing brief filed by National Farmers Organization (NFO) supported adoption of the proposed amendment. There was no opposition to the proposal.

Testimony in the record illustrates that the partially regulated distributing plant is indeed satisfying Class I needs in the marketplace through the use of pooled milk, thereby benefitting the pool. Therefore, the proposal to include shipments of producer milk to a partially regulated distributing plant when determining the qualifications of pool supply plants should be adopted.

2. Modification of pool supply plant shipping standard by market administrator. A proposal to give the market administrator the discretionary authority to administratively change the shipping percentages upward or downward for a supply plant or a unit of supply plants being qualified by a cooperative association should be adopted. This decision extends the market administrator's discretionary authority to include proprietary supply plants. The proposed provisions would operate similarly to ''call'' provisions in other order markets where the market administrator, upon request or upon recognizing a potential problem, notifies the handlers in the order that action may be taken to change the shipping percentage requirements. The percentage change required would be based upon the evidence that the market administrator receives and/or the supply and use data for the market.

The order currently provides that for a cooperative's balancing plant or unit of such plants, the minimum qualifying percentage for each month is established according to the amount of producer milk used in Class I as a percent of total producer milk within the order for the same month of the previous year. The order currently does not provide for any

sort of discretionary authority to change pool supply plant shipping requirements. To adjust the shipping percentage requirements, either the requirements must be suspended or permanent changes must be sought through amendments to the order.

The director of bulk milk sales for MMPA testified in support of the cooperative's proposal at the reopened hearing. The proponent's intent is to allow for the adjustment of these requirements on a more timely basis than can be done under the current provisions.

The MMPA witness testified that the current order provision is designed to establish a performance standard that reflects the Class I needs of the local market and assures fluid processors that their requirements will be fulfilled. He stated that the provision contains a self-adjusting mechanism because the current month's shipping requirements are based on the market requirements from the previous year. He further stated that the provision normally works well. The witness testified, however, that occasions exist in which the market conditions have changed to such an extent that necessary corrections to the self-adjusting mechanism cannot be made on a timely basis.

As an example, the MMPA witness stated that because the minimum shipping percentages are determined by the percentage of producer milk utilized in Class I, the percentage can be influenced by changes in the monthly producer receipts. The witness stated that if milk that normally would be pooled is not, producer receipts and the Class I utilization percentage for the order would change, in turn affecting the following year's shipping requirement. The witness also stated that combining this possible decrease in pool receipts with an increase in bulk milk sales to other markets also may impact the following year's shipping requirements. He said that the shipping percentages established may not reflect the following year's actual fluid requirements from the local and distant markets.

The witness noted that two current options to adjust the shipping percentage requirements, suspension or permanent amendment to the order provisions, are time-consuming and may require unwarranted drastic action.

In a post-hearing brief, MMPA reiterated support for the proposal. No other support or opposition was expressed at the hearing or in briefs.

Dean Foods Company's (Dean Foods) exception to the revised recommended decision agreed that this proposal's adoption would allow for greater flexibility than currently exists. However, Dean Foods contended that by not extending authority for the market administrator to modify shipping standards for proprietary supply plants, the revised recommended decision excludes proprietary and favors cooperative supply plants. The exception noted that market conditions would affect proprietary and cooperative supply plants similarly; hence, the flexibility of standards should be available to all supply plants.

The record evidence indicates that empowering the market administrator with the authority to adjust the pool supply plant shipping requirements should result in more timely changes in comparison to current procedures. A more flexible and efficient process would result by authorizing the market administrator to adjust the requirements to either encourage shipments or discourage uneconomic movements of milk as a result of changes in marketing conditions.

It appears that there is a need to provide flexibility of supply plant performance standards when market conditions change from one year to the next. Under such conditions, which could occur at any time, the normal mechanism for change in the order program, which is the hearing process, would not provide a timely response.

Thus, the proposal to give the market administrator discretionary authority to revise the supply plant shipping standards should be adopted. Doing so will provide a means of making appropriate adjustments in this pooling provision as market conditions indicate a need for adjustments. It must be recognized that a more timely response to changed conditions can be provided under such a provision.

There is no apparent reason why restrictions should be imposed to limit the market administrator's authority to change the pooling provisions. It is intended and expected that this authority will be exercised with impartiality and integrity. Moreover, without restrictions more appropriate responses over a broader range of changed conditions may be obtained. Limitations on the authority to revise shipping percentages could result in the market administrator being unable to either increase or decrease the requirements to the full extent necessary in a given situation.

It should be noted that, to the extent appropriate shipping requirements for supply plants can be determined in advance, it would be desirable for the market administrator to revise the requirements for several months at a time, if necessary. If conditions subsequently changed, the market administrator would again review the situation and make further adjustments as necessary. It is hoped that such an arrangement will serve the market well and provide less uncertainty as to what the requirements will be.

Testimony by proponent at the hearing stated that because proprietary supply plants have different qualifying standards than cooperative supply plants, the proposal did not need to be applied to proprietary supply plants. Proprietary plants have a fixed qualification percentage of 30 percent of the total quantity of Grade A milk received at the plant each month. The order allows both proprietary and cooperative supply plants to qualify automatically during the months of March through August based on performance during the previous September through February.

The proposal published in this proceeding's hearing notice did not limit the scope of the market administrator's authority to adjust shipping percentages to cooperative-operated supply plants only. Though no testimony was offered to include proprietary supply plants, it is reasonable to extend the market administrator's authority to adjust the shipping percentages for either or both cooperative- or proprietary-operated pool supply plants. Market conditions affect all plants, no matter whether operated by cooperatives or proprietors, and the recommended decision would have been unnecessarily restrictive.

Whenever the market administrator believes that a change in the shipping standards may be needed, whether by request or on his own initiative, he will give written notice that such a change is being considered and invite interested persons to comment. This procedure will assure that all potentially affected persons can have their views and other pertinent information fully considered by the market administrator before a decision is made and announced. Such a procedure now is followed under other orders when a ''call'' for additional shipments by supply plants is contemplated and also is an appropriate requirement for the new authority provided herein.

3. Multiple Component Pricing. A multiple component pricing (MCP) plan should be adopted in the Southern Michigan Federal milk marketing order. The pricing plan would be patterned after the multiple component pricing plan initially proposed by Leprino Foods Company (Leprino) and supported by MMPA, Independent Cooperative Milk Producers Association (ICMPA), and several other dairy

organizations. Producers would be paid on the basis of three components in the milk: butterfat, protein, and the remaining fluid portion that is the ''fluid carrier'' of the butterfat and protein ingredients. Producers would also share in the value of the pool's Class I and Class II uses. A somatic cell adjustment would apply to the protein prices paid to all producers no matter how the milk was used.

Regulated handlers would pay for the milk they receive on the basis of total butterfat, the protein and fluid carrier used in Classes II and III, skim milk used in Class I, and the hundredweight of milk used in Classes I and II. The protein price paid by handlers for Class II and Class III milk will be adjusted based on the somatic cell content of the milk. This somatic cell adjustment is discussed fully under Issue 4.

At the present time, milk received by handlers is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the order for each class of use. Adjustments for such items as overage, reclassified inventory, location, and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight for milk testing 3.5 percent butterfat to be paid to producers for the milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound on the Chicago Mercantile Exchange, as reported for the month by the U.S. Department of Agriculture (USDA), by 0.138 and subtracting the Minnesota-Wisconsin price (the M-W) at test, also as reported by USDA, multiplied by 0.0028.

The initial hearing in this proceeding was held February 17 and 18, 1993. MMPA and ICMPA, the two original proponents of multiple component pricing under the order, requested reopening the February 1993 proceeding to consider proposals to modify the MCP plan recommended by the USDA for the Southern Michigan Order in a decision issued November 29, 1993 (58 FR 64176). MMPA and ICMPA represent approximately 80 percent of producer milk in the Order.

The November 1993 recommended decision included a thorough analysis and discussion of the need for MCP pricing and the desirability of including protein as a pricing component based on the record of the proceeding initiated on February 17, 1993. This revised recommended decision includes some of the discussion and basis for adoption of MCP contained in the initial recommended decision, but is based on the entire record of the proceeding which includes the reopened hearing held March 1, 1994.

The MCP plan in the original recommended decision would have priced milk on the basis of its protein and butterfat components. The recommended MCP plan generally was patterned after the plan adopted for the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana orders. Producers would have been paid on the basis of the pounds of milkfat and protein contained in their milk and would have shared in the value of the pool's Class I and Class II uses on a per hundredweight basis. The butterfat price would have been based on the market value of butter, while the protein price would have been computed by attributing all of the residual value of the M-W, after its butterfat value had been subtracted, to protein. Regulated handlers would have paid for the milk they received on the basis of total milkfat, the protein used in Classes II and III, the skim milk used in Class I, and the hundredweight of total product used in Classes I and II. Protein prices paid to producers on all producer milk would have been adjusted by the somatic cell count of the milk.

MMPA and ICMPA endorsed the recommendation to adopt MCP, but proposed a specific change to the recommended MCP plan. The MMPA and ICMPA (proponent) witness stated in testimony at the reopened hearing that the cooperatives remain committed to the adoption of a MCP plan administered through the Federal order system. Proponents' witness testified that the adopted plan should be equitable to both producers and processors and should send the correct economic signals from the marketplace to the farmer. The witness testified that when the proponents initially proposed a multiple component pricing plan for the Southern Michigan order, their intent was not to create conflicting economic signals for farmers and processors. Proponents' witness stated that the recommended MCP plan could send conflicting signals to handlers and producers by overstating the value of protein in producer milk. The witness stated that such overstatement would create an incentive for processors to purchase low-protein milk while at the same time would encourage farmers to produce high-protein milk.

In the reopened hearing, MMPA and ICMPA specifically requested further consideration of the MCP approach proposed by Leprino in the original proceeding. Because other hearing participants had been given insufficient advance notice of Leprino's pricing plan to adequately evaluate the proposal and cross-examine the Leprino witnesses, the Leprino proposal was not considered as a viable alternative in the recommended decision. After having an opportunity for extensive review of the Leprino proposal after the initial hearing, the proponents concluded that the Leprino alternative was a better alternative than the one in the recommended decision.

The Leprino proposal is a three-component pricing system, with the butterfat and protein component prices based on market values for butter and cheese, and a ''fluid carrier'' component representing the residual value of the M-W price after the protein and butterfat values are subtracted. Proponents' witness testified that because butterfat and protein values can be determined by the butter and cheese markets, respectively, they are reflective of economic conditions with a known degree of precision. Proponents' witness agreed with the original Leprino proposal that the balance of the M-W value should be attributed to a fluid residual price applied to milk volume after the butterfat and protein portions of the M-W price have been accounted for, stating that it is not feasible to assign as precise a value to the other nonfat nonprotein solids in milk as can be assigned to the butterfat and protein components.

Proponents' witness gave two reasons for wanting to consider the Leprino proposal instead of supporting the recommended MCP plan. The first reason involves the method of determining the value of protein. The witness stated that the recommended decision equates the protein value to the skim residual of the M–W price, while the Leprino proposal values protein on the basis of its cheese yield potential.

The proponents' witness stated that the Leprino proposal uses a current market value for cheese and a modified version of the Van Slyke formula, which relates changing protein levels in milk to changes in cheese yield, to calculate the value of protein. The witness stated that the protein price determined through the Van Slyke formula accurately reflects the incremental value of protein in milk and would result in a fair measure of protein value to the dairy producer and handler.

The proponents' witness suggested that the protein price should be derived from the National Cheese Exchange (NCE) price for 40-pound blocks of Cheddar cheese as representing the current market value for cheese. The witness stated that the block cheese price is the most commonly used base price for cheese and is a standard that many cheese manufacturers recognize in pricing their product. The witness testified that the block price better reflects the Southern Michigan commercial market for cheese than the barrel cheese price. He contended that a barrel cheese price would reflect a surplus commodity price, a situation that does not exist in this order.

The second reason that proponents' witness gave for supporting the Leprino proposal is that this plan moderates the impact that component pricing would have on processors of dairy products that have not been scientifically shown to have as direct a relationship between yield and protein content as does cheese. For example, the witness testified, in some instances processors may be unable to recover the same value for protein from products such as packaged fluid cream, condensed milk, and powder in comparison to the value from cheese manufacture.

MMPA's post-hearing brief asserted that under Leprino's proposal, the cost and value of protein is neither too low nor too high. The brief contended that the current butterfat/skim pricing system, in which only the value of butterfat is specifically recognized, places no value on protein. The brief further contended that the recommended decision, in which the entire value of the skim portion of milk is assigned to protein, places too much value on protein, for the true economic value of protein to dairy product processors may bear little resemblance to the skim residual.

A Leprino witness testified again at the reopened hearing in support of Leprino's proposal. Leprino operates two manufacturing plants in the Southern Michigan marketing area that process over 40 percent of the Class III milk and approximately 16 percent of all milk marketed in the Southern Michigan order area. Leprino also manufactures and distributes mozzarella cheese to the food service industry throughout the country.

In testimony at the reopened hearing, the Leprino witness supported the pooling and producer pay price proposals suggested by MMPA and ICMPA. The witness reiterated the characteristics and merits of Leprino's three-component proposal submitted at the original hearing.

The Leprino witness argued at the reopened hearing that one of the major inadequacies of the current butterfat/skim pricing system is that skim is priced without any consideration to the components in this skim milk. The witness said that under the current pricing provisions, the skim value of milk accounts for almost 79 percent of the total Class III (M–W) price; however, the protein or solids-not-fat components included in the skim are not valued. The witness said that producers and handlers receive or pay the same price for milk containing lower or higher levels of protein.

The Leprino witness stated that the original recommended decision in the proceeding would have replaced this current system with another system that inequitably allocates almost 79 percent of the M–W price to only the protein component of skim milk. The witness testified that allocating all of the skim value of milk to the protein component creates a residual protein value which reflects more than the true value of protein to manufacturers. The witness stated that the recommended decision ignores the value and importance of milk components other than butterfat and protein and places a value on protein that cannot be recovered from the marketplace by most manufacturers of butter, nonfat dry milk, or cheese.

The Leprino witness stated that encouragement needs to be given to producers to produce milk with higher protein content and to manufacturers to utilize these higher levels of protein. He stated that the intent of Leprino's proposal is to send an economic message to producers to produce higher-protein milk while allowing handlers to recover the cost of milk components from the market and cover operating costs. The witness asserted that the concepts offered in its proposal are economically sound, fair to handlers and producers, and in the best interest of long-term stability in milk pricing.

Leprino's post-hearing brief stated that under the original recommended decision, a Cheddar cheese manufacturer's gross margin may decline when paying more for milk with a higher protein content. The brief described Leprino's proposal as achieving the economic balance necessary for processors to pay producers for milk with higher protein levels without reducing processors' profit margins. Leprino's brief stated that consumers also would benefit by receiving dairy products with potentially higher-protein contents without unwarranted inflationary price increases.

The Leprino witness stated that pricing the butterfat component provides producers with an economic incentive to produce the butterfat in raw milk. The witness asserted that a related revenue value for processors exists for butterfat in finished products such as butter, fluid milk, cheese, and other products.

As in the case of butterfat, the witness stated, pricing the protein component gives producers an economic incentive to increase the protein content of their milk. The Leprino witness stated that the protein component's value and related revenue to processors is based on its market value in cheese, with the formula for the protein price based on recognized Cheddar cheese yields using the modified Van Slyke formula.

The Leprino witness suggested that the NCE price reflects the market value of cheese and that the NCE price multiplied by a representative yield factor (calculated via the Van Slyke formula) would establish the value of a pound of protein to a cheese manufacturer. He stated that either the block or the barrel price could be used to represent the Cheddar cheese market price, and stated a preference for the barrel price.

Leprino's exception to the original recommended decision and testimony in the reopened hearing noted that a single component such as protein is not an appropriate means of accounting for all of the value of the skim portion of milk to a handler. Instead, the exception and witness suggested, the value of the protein component should be based on the value of protein in cheese, and the fluid carrier should be used to carry the residual M-W value (M-W price less fat and protein values) which currently cannot be tied specifically to an individual component of milk or derived from a market value for individual components of milk.

A witness for the National Cheese Institute (NCI), the national trade association for manufacturers, processors, and marketers of all varieties of cheese, stated that NCI did not testify at this proceeding's initial hearing because at that time a NCI task force made up of cheese manufacturers and processors was studying the MCP issue. The witness testified that NCI supports the adoption of a single uniform three-component pricing system in all orders where a significant amount of cheese is produced. At the reopened hearing, the NCI witness supported MCP on Class III milk but had no position regarding Class II milk. In a post-hearing brief, NCI asserted that applying MCP to Class I milk would be inappropriate because there exists no measurable or

discernable advantage to varying protein levels for milk used as a fluid beverage.

The pricing plan supported by NCI is identical to the proposal advanced by Leprino, MMPA, and ICMPA. NCI's post-hearing brief noted that its proposal (the Leprino plan) allows cheesemakers to break even from processing milk with higher protein contents by seeking out and rewarding producers with higher-protein milk. The NCI witness asserted that any formula which prices protein higher than its value in producing cheese will cut into processor margins and cause cheese manufacturers to seek out lower-protein milk.

As an industry-wide consensus resulting from the NCI task force, the NCI witness suggested that the NCE barrel price should be used to represent the market value of cheese. The witness stated that Cheddar cheese is recognized as an industry standard, and the barrel price was chosen because a significant amount of barrel cheese is traded on the National Cheese Exchange.

Kraft General Foods (Kraft) testified at the initial hearing in this proceeding but not at the reopened hearing. A post-hearing brief filed on behalf of Kraft supported the Leprino proposal. The brief supported using a barrel cheese price to derive a value for protein in milk. The brief also supported maintaining the quality/somatic cell count adjustment included in the recommended decision.

The Kraft brief asserted that the Leprino plan would avoid establishing conflicting economic signals from a protein price which is so high that manufacturers are encouraged to procure low-protein milk. As such, according to the brief, the Leprino proposal represents a positive refinement in the evolution of MCP plans under the Federal order system. The brief stated that the Leprino proposal's protein price tracks the added value of extra protein in added cheese yield and is more closely aligned to the competitive value of milk protein as reflected in many existing industry-sponsored MCP plans than is the plan contained in the recommended decision.

The Kraft brief stated that no proposal at the reopened hearing accounted for handler manufacturing costs when protein is converted from producer milk to finished products. Therefore, the brief noted, all proposals overstate the protein component in raw producer milk.

The Kraft brief noted that the absence of a make allowance causes exaggeration of the component value of protein in raw producer milk and that using the barrel price will tend to moderate any overstatement of the protein value. The brief argued that the price difference between the barrel and the block prices of cheese is due primarily to packaging costs, not milk or cheese value, and concluded that use of the block price instead of the barrel price to calculate a protein price would effectively assign some finished product packaging value to milk protein.

In opposition to one feature of the Leprino plan, a witness for National All-Jersey, Incorporated, (NAJ) argued at the reopened hearing that attributing the residual M–W value to volume does not recognize the value of solids in milk other than protein and fat. The witness asserted that MCP plans that price a portion of the skim milk value on a volume basis would only partially correct the current provisions because all of the solids in skim milk should be priced. The witness stated that increasing returns for milk on a volume basis relative to the price of protein would tend to reduce the producer's incentive to employ feeding, genetics, and management practices to increase protein.

NAJ is a national dairy farmer organization that assists members in marketing their milk. The NAJ witness testified that NAJ's primary mission since 1976 has been the promotion of multiple component pricing with the goal of implementing a uniform MCP plan throughout the Federal order system.

In the reopened hearing, the NAJ witness supported the proposal submitted by MMPA and ICMPA, with two modifications. The witness stated that under the NAJ proposal, the protein price is calculated using a different formula than in the proponents' proposal, and the protein price includes a market value for whey. The NAJ witness also stated that the NAJ proposal, after pricing the butterfat and protein components, places the residual value on other nonfat nonprotein solids.

The NAJ witness stated that the major objective of any MCP plan is to provide dairy producers with an economic incentive to produce protein, the most valuable component in milk. The witness stated that because a direct relationship exists between product yields and the level of protein and other solids contained in milk, Class II and III handlers are able to pay for milk in more direct relation to its economic value. The witness stated that an economically and justifiably high protein price is needed to encourage producers to increase the ratio of protein to fat in their milk production.

The NAJ proposal was characterized by the witness as a total solids plan which prices all components in milk. The witness stated that pricing all components in skim milk corrects the inadequacy of the current butterfat/skim pricing system in which a pound of water receives the same price as does a pound of protein or nonfat solids in the skim portion of producer milk. The witness asserted that the NAJ proposal allows handlers to purchase milk more in accordance with its economic return and still gives handlers the incentive to procure and producers to produce higher-protein milk. The NAJ witness supported calculating the same protein and other solids price for both handlers and producers.

The NAJ witness stated that the NAJ proposal includes whey in its protein price calculation in an effort to account for all of the value in milk protein, and described the whey protein concentrate (WPC) price as the best indicator of the market value of protein in whey. The witness contended that the protein price computed under the NAJ proposal provides more equitable returns to both handlers and producers in comparison to the other proposals presented at the reopened hearing. NAJ's brief asserted that under its proposal, as high a percentage of skim value is allocated to protein as can be economically justified. NAJ maintained that whether or not a cheese plant processes whey should have no bearing on the inclusion of whey in the pricing formula.

For the protein calculation, the NAJ witness said that the NAJ proposal uses the NCE block price for Cheddar cheese because this price is used more widely than other announced cheese prices. Also, the witness stated that the NCE block price is used as a base for pricing other cheeses more than any other cheese price.

The witness stated that the residual under the NAJ proposal represents both the value of other milk solids besides protein and the difference between the value determined by product prices and the competitive M–W price. The NAJ witness testified that the purpose of placing the residual value on other solids is to provide farmers with an incentive to produce something in milk other than water.

Also supporting NAJ's proposal is Tri-State Milk Producers Cooperative (Tri-State), a qualified cooperative with about 640 members marketing milk in several orders, including the Southern Michigan order.

Several participants in the proceeding expressed opposition to portions of the NAJ plan during the hearing and in post-hearing briefs. MMPA's post-

hearing brief asserted that placing market values on whey protein and non-fat non-protein solids (principally lactose) assigns values to these solids that are not present in the marketplace.

The Leprino witness opposed including whey in the computation of the protein price for the following reasons: (1) the value of whey is not based on the inherent value of protein or other solids in raw milk; (2) investment in a whey operation is based on a return calculated from the value-added nature of the process and/or the cost of other disposal options rather than the raw ingredient cost; (3) raw unprocessed whey recovered from the cheese making process has no inherent value in the United States; (4) unprocessed whey cannot be sold beyond the factory; (5) raw unprocessed whey is a disposal problem for many cheese operations; and (6) whey returns are excluded from calculation of the cheese support price.

Leprino's brief asserted that the main interest of NAJ is to maximize producer returns for high protein milk and that the NAJ plan achieves this objective by providing for a higher protein component price than can be justified in the marketplace. NCI's brief gave reasons similar to Leprino's for excluding whey in a MCP plan.

The Leprino witness stated that use of a residual solids approach requires a total solids test on milk in addition to a protein test. The witness stated that using a residual fluid approach ascribes all the remaining value to volume, eliminating the need for additional testing, and thus is easier and less costly to administer.

At the initial hearing session, two witnesses testified that protein testing is already widespread in the Southern Michigan market and that testing methods are reliable and accurate. A witness employed in the field of dairy chemistry testified on behalf of MMPA that in the case of protein, the infra-red milk analyzer calibrated with reference to the Kjeldahl test is the method most used by the industry. This method is approved by the Association of Official Analytical Chemists, and the repeatability and accuracy of this method is much better than those of the Babcock test for butterfat.

A MMPA quality control witness testified that protein tests on producer milk in Order 40 are conducted on infra-red test instruments. The witness emphasized that all cooperatives in Order 40 have infra-red instruments and currently are testing producer milk for protein a minimum of five times a month. Therefore, he stated, the inclusion of protein testing would not result in increased cost. The proponent's witness recommended that if the proposal is adopted, the payment to producers should be based on an average of a minimum of five fresh tests per month for both protein and somatic cell count.

After issuance of the revised recommended decision, comments that specifically pertained to multiple component pricing generally supported its adoption in the Southern Michigan marketing area. Of the comments received by hearing participants, Leprino and NCI supported the recommended ''Leprino Plan.''

Several exceptions to the revised recommended decision advocated consistency of multiple component pricing plans across orders. NCI advocated the importance of consistent plans in those orders with a significant quantity of manufacturing milk and production of a significant quantity of cheese. A joint exception filed on behalf of Country Fresh, Inc. (Country Fresh) and Parmalat USA Corporation (Parmalat) advocated consistency of plans across orders, and commented that component pricing plans implemented within the Federal milk order system have become more complex. NAJ and Tri-State also commented on the lack of uniformity between the recommended multiple component pricing plans for this Southern Michigan proceeding and the proceeding involving five midwest markets (DA–92–27).

The Southern Michigan order should be amended to include multiple component pricing. On the basis of both the initial and reopened records of this proceeding, the proposed multiple component pricing plan would entail pricing milk used in Class II and Class III on the basis of protein and a fluid carrier residual. The Class I and Class II differential prices would be applied to milk used in Classes I and II, and Class I milk would continue to be priced on the basis of volume. Handlers would pay all producers for butterfat directly and would adjust protein prices paid to producers for the somatic cell count of Class II and Class III milk. Because milk used for Class III–A purposes is allocated on a pro rata basis with total receipts of Class III milk, MCP is applicable to milk used in Class III–A in this recommended pricing plan.

Dean Foods and several other fluid milk processors concurred with the revised recommended decision that multiple component pricing should apply to Class II and Class III milk only, while Class I milk should continue to be priced on a butterfat-skim volume basis. Numerous comments filed regarding the proposed somatic cell adjustment on Class I milk also stated that MCP should not be applied to Class I. This decision has neither recommended nor adopted provisions that would price Class I milk on its protein and fluid carrier residual components.

The record indicates that a large percentage of the producers pooled under the Southern Michigan order are already eligible for or receive some form of multiple component pricing and that nearly all of these component pricing plans use protein as a pricing component. The record also shows that the diverse component pricing programs that currently exist promote disorderly and inefficient marketing conditions in the procurement of milk supplies by competing handlers. The different programs cause non-uniform bases of payments to producers.

The adoption of multiple component pricing will allow the Order to recognize the additional value in milk with a higher-than-average protein content. At the same time, by establishing a residual value based on milk volume, the protein component will not be over-valued, as proponents argue would be the case under the original recommended decision.

Attributing at least a portion of the value of milk to protein in a market such as Southern Michigan, where most of the milk not used for bottling purposes is processed into cheese, is appropriate. Record evidence in this proceeding clearly shows that demand for protein is higher than for other components of milk because of its functional, nutritional, and economic value in the marketplace. The functional characteristics of protein allow it to form the matrix in the production of cheese and yogurt. Protein is also important to the air formation in the manufacture of certain products and provides some required nutrients in the human diet.

Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Additionally, handlers receiving milk that results in greater volumes of finished products such as cheese and cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished products deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield. Thus, sending an economic signal to dairy farmers will encourage them to maximize the production of those

components which have the greatest demand in the marketplace.

Pricing milk on the basis of its protein content also meets the criteria of measurability, intrinsic value, and variability. The evidence in the record shows that protein can be easily measured and, in fact, that the variability in measurement may be less than the variability in butterfat testing because protein does not separate as does butterfat. The record evidence shows that protein has value to the manufacturing sector in the form of improved product yield and product structure. The value to the fluid sector was not quantified in the hearing record; however, testimony indicated some benefit to the fluid sector from higher-protein milk, resulting in a more wholesome and nutritional product. The criterion of variability is necessary to justify pricing a component separately from the product in which it is contained. In the case of protein in milk the record indicates that the level of protein varies from season to season, region to region, and farm to farm. In view of its functional, nutritional, and economic value in dairy products, its widespread use as a pricing component in the Southern Michigan market, and its qualification under the three criteria above, protein appears to be an appropriate component for pricing milk in Federal Order 40.

Hearing evidence from all parties indicates that pricing milk in Order 40 on either the current butterfat/skim basis or the basis of two components—butterfat and either protein or nonfat solids—will not adequately describe, accurately value, or be a sufficiently precise method for classifying and pricing milk used for manufactured products.

As proposed, prices for butterfat and protein should be market-driven. Deriving butterfat and protein values from finished product prices will send the appropriate economic signals to producers and handlers by indicating current market supply and demand conditions for dairy products containing these components of milk.

At issue is the specific design for the revised recommended MCP plan. Two basic MCP plans were proposed in the reopened hearing: The plan proposed by proponents MMPA and ICMPA and supported by Leprino, NCI, and Kraft (the Leprino plan) and the plan proposed by NAJ and supported by Tri-State and the American Jersey Cattle Club (the NAJ plan).

The Leprino plan derives a protein price from either the NCE block or barrel cheese price and assigns the residual skim value of the M–W price to a ''fluid carrier'' component of milk. The NAJ plan derives a protein price from the NCE block cheese and whey protein concentrate prices and assigns the residual skim value of the M–W price to the remaining nonfat nonprotein solids. Each component of the multiple component pricing plan recommended for adoption will be discussed separately.

The variety of multiple component pricing plans in Federal milk orders reflect different industry proposals, different hearing records, different marketing conditions, a continual refinement in multiple component pricing plans, and an attempt to acknowledge and lend uniformity to what is occurring in the marketplace. It seems reasonable to believe that multiple component pricing plans will improve as the industry develops more experience with them.

Butterfat. The value of butterfat in the amended order will be the same as under the current order. There was no proposal or testimony to change the way butterfat currently is valued.

This decision continues the historical relationship of the values of butterfat and butter. Currently the value of butterfat is expressed as a differential; that is, the difference in value between 0.1 pound of butterfat and 0.1 pound of skim milk. The amended order will express the value of butterfat on the basis of a price per pound. Whichever method is used, the value of butterfat in milk is the same. However, by expressing the value on a per pound basis instead of a differential, the objective of demonstrating clearly to producers the value of fat in milk is easily achieved.

As proposed, the butterfat price per pound in the amended order will be determined by multiplying the butterfat differential by 965 and adding the Class III price. The resulting price per hundredweight would then be divided by 100 to give a price per pound of butterfat.

Protein. The protein price for milk pooled under the Southern Michigan Federal milk order should be calculated by multiplying the monthly average of 40-pound block cheese prices on the National Cheese Exchange at Green Bay, WI, by 1.32, without including a value for whey protein.

No opposition was expressed at the hearing to pricing protein on the basis of its value in the manufacture of cheese. The differences between participants came in determining the appropriate level of the protein price.

The original Leprino proposal would calculate the protein price by multiplying the monthly average of 40-pound block cheese prices on the NCE by 1.32. Leprino's formula would have resulted in average protein prices, per pound, of $1.6925 in 1992 and $1.6971 in 1993.

The NCI proposal supported by Kraft (modifying the Leprino plan) would calculate the protein price by multiplying the monthly average NCE Cheddar barrel price by 1.32. NCI's formula would have resulted in average protein prices, per pound, of $1.6408 in 1992 and $1.6475 in 1993.

NAJ uses a ''justifiably higher protein value'' established from block Cheddar (normally higher than barrel) and adds a WPC price in order to account for all milk protein and to give farmers an incentive to produce protein rather than to reflect the additional value manufacturers realize from increased protein. The NAJ proposal would calculate the protein price in two parts: (1) multiply the NCE monthly average 40-pound block cheese price by 1.32, and (2) add the monthly average WPC price multiplied by a yield factor of 0.735. The sum of these two values would equal the protein price. NAJ's formula would have resulted in average protein prices, per pound, of $2.0738 in 1992 and $2.1664 in 1993.

Each of the proposals would result in a lower protein value than in the recommended decision or in orders containing MCP plans, such as the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania Federal orders. The handler protein price per pound for these orders would have averaged $2.77 and $2.82 in 1992 and 1993, respectively.

Because the percent of the skim milk value allocated to protein differs under the two proposed plans, the protein price also differs. Under the original recommended MCP plan, 79 percent of the total milk price would be allocated to protein on the basis of 1993 prices. For 1993, the NAJ proposal would allocate 59 percent to protein, and the Leprino proposal would allocate 46 percent of the total M-W price to protein. The Leprino plan assigns less value to protein than the NAJ plan because this plan does not value the protein in whey.

Undisputed by hearing participants was the 1.32 factor, which represents the pounds of 38 percent moisture Cheddar cheese obtained from one pound of protein with 75 percent of the protein going into the cheese as calculated by the modified Van Slyke cheese yield formula. The hearing record indicates that the modified Van Slyke formula accurately measures incremental changes in protein. This accuracy supports the concept that

cheese plants would be able to maintain consistent margins from the processing of small increases of protein content in milk. Assuming butterfat is constant, a change of protein by one pound in this formula will change cheese yield by 1.32 pounds. Therefore, the 1.32 factor is appropriate for determining an order protein price based on a market-determined cheese price.

Use of a Cheddar cheese price as a basis for valuation recognizes that, for Cheddar cheese: (1) a well-established national market price exists; (2) standards for manufacture and grading are accepted widely on a national basis; (3) the Van Slyke formula calculates yields that are well-known and verifiable; (4) a majority of other cheese manufactured in the U.S. is traded in relation to Cheddar values with economic differences in costs of manufacturing being reflected in the marketplace; and (5) using Cheddar as a standard significantly simplifies the process.

The question of which cheese price to use in the market protein value calculation, either the NCE block or barrel price, will determine the degree to which the value of the skim portion of milk will be assigned or allocated to protein. For the purpose of reflecting changes in Cheddar cheese market prices (as opposed to the level of such prices), it makes little difference whether the barrel or block price is used because the prices move very similarly, with the barrel price approximately 3 to 4 cents per pound lower than the block price during 1991–93. The difference between the average block and barrel prices from 1992 to 1993 was $0.0383 per pound. Multiplying this difference by the 1.32 factor results in an average difference of $0.0506 per pound of protein between the prices derived from the barrel and the block cheese prices.

In comments filed in response to the revised recommended decision, NAJ and Tri-State supported the use of the NCE 40-pound block cheese price to calculate the protein price and adjust the protein price for somatic cell count level. However, Dean Foods, Farmers Dairies, Inc., Anderson-Erickson Dairy Company (Anderson-Erickson), and Southern Food Groups, Inc., took exception to using the 40-pound block Cheddar cheese price in determining the protein value and the somatic cell adjustment, and instead supported using the barrel Cheddar cheese price. The exceptions stated that prices in the Federal order program are based on a concept of minimum prices and the barrel Cheddar cheese price would better approximate a minimum price.

The monthly average price for 40-pound block Cheddar cheese on the NCE is the appropriate price to use for determining the protein price. Use of the block price results in producers receiving a higher price for protein than if the barrel price were used, without handlers incurring any significantly higher cost for milk. Use of the block price is also consistent with the Eastern Ohio-Western Pennsylvania, Ohio Valley, and Indiana Federal orders, where the block price is used to adjust the producer pay price for somatic cell count. The block Cheddar cheese price has been determined to be the appropriate price to be used in determining the protein value and adjust for somatic cell count in a separate proceeding involving five midwest markets. The Cheddar cheese block price is used as a standard by many cheese manufacturers to price different types of cheese; used in the Coffee, Sugar, and Cocoa Exchange futures price of cheese; and in California's 4b price.

The price difference between block and barrel cheese may be due to packaging and other nonmilk factors. However, the protein price must be established at a level that best meets the needs of all concerned. The block cheese price should be more effective than the barrel price in establishing a sufficiently high protein price to accomplish the goal of encouraging producers to produce protein without having a detrimental impact on handlers.

In pure economic terms the price of a product represents the supply and demand for that product as affected by place, form, and time. The problem with determining a price for protein contained in milk is that the protein is not marketed as a separate unique product, but is marketed as an integral part of both fluid and manufactured dairy products. Therefore, in determining an appropriate protein price, the value of protein in dairy products is determined by using the value of a product whose yield is a function of the protein content of the milk. At this point in time no attempt is made to reflect the protein content of milk in the value of milk used for fluid use. For this reason, the component pricing plan recommended in this decision does not apply to milk used for Class I purposes.

The protein formula proposed by NAJ also would include the value of whey protein in the protein price so that all of the protein in the milk would be accounted for. NAJ's inclusion of whey value would increase the protein price computed from the NCE block price by an average of $0.3813 and $0.4690 per pound in 1992 and 1993, respectively.

Dean Foods concurred with the revised recommended decision that the value of protein in whey should not be included in the protein price calculation.

NAJ and Tri-State excepted to the calculation of the protein price in the revised recommended decision, advocating instead their proposal from the reopened hearing. The groups disagreed with the revised recommended decision's conclusion that because whey processing facilities do not currently exist in the Southern Michigan marketing area, whey should not be included in the protein price calculation. The groups also contended that the NAJ plan would allow for more uniform gross margins for all component levels than would the Leprino plan. The exception questioned whether the Department was more interested in providing returns to producers or manufacturers.

The whey protein factor should not be included in the computation of the protein price. Hearing evidence shows that the whey protein portion of the NAJ protein price is not necessarily based on a value that a manufacturer can recover from a whey operation. Use of the market price for whey protein concentrate, the highest-priced whey product, ignores the diversity of whey handling operations and practices that exist throughout the dairy industry.

Whey protein concentrate manufacturing involves sophisticated and expensive technology used by very few manufacturers, and apparently by none in Michigan. Until recently, the dairy industry has treated whey as having negative value, and the production of whey in connection with cheese manufacturing represented a disposal problem involving costs rather than a byproduct opportunity. Inclusion of a whey value in the protein price at this point in the development of whey disposal technology would result in including the potential revenue associated with whey, but none of its actual cost.

The principal issues that must be addressed in determining the computation of the protein price are the factors that must be included to arrive at a price that most accurately reflects the value of protein in milk. Analysis of the data in this decision shows that using the block cheese price results in a protein price that accomplishes three goals: 1) components will be priced at levels that reflect their value in the market place, 2) components will be priced at levels that inform producers about which component has the greatest

value and that make it worthwhile to produce that component, and 3) components will be priced at a level that will return a positive result to the manufacturing industry. All three of these goals are constrained by the requirement that the total value of the component prices must be equal to the M-W price.

Fluid Carrier. The balance of the M-W price, after the values of protein and butterfat are removed, should be priced on the basis of a ''fluid carrier'' residual. The fluid carrier price per hundredweight will be computed by subtracting from the Class III price the sum of the butterfat price times 3.5 and the protein price times the month's average protein test of the M-W price survey milk. Because the computation of the fluid carrier price is based on a residual value, the fluid carrier price could be negative. In this instance, the fluid carrier price would remain negative, instead of adjusting either the butterfat or protein prices.

Because the M–W price is a competitive pay price rather than a price determined from calculating each component's value, the M–W price reflects factors such as volume premiums, cheese yield premiums, solids-not-fat premiums, butterfat values offered by some manufacturers that exceed the butterfat differential, and pure competition for supply. The fluid carrier residual helps to place a value on these factors that is not accounted for elsewhere. Also, the standards for all finished products require inclusion of some fluid from raw milk; for example, skim milk powder has approximately 4 percent moisture, and Cheddar cheese has a 38-percent moisture standard. Therefore, the water in producer milk has some value in manufactured products, resulting in revenue to the processor as that fluid is captured in products such as butter, yogurt, cheeses, and nonfat dry milk.

MMPA, ICMPA, Leprino, NCI, and Kraft all supported a fluid carrier component to represent the residual value of the hundredweight of producer milk in Class II and Class III. Each party supported a formula identical to that which is recommended for adoption. The fluid carrier residual would have provided an average value, per hundredweight, of $3.39 in 1992 and $3.68 in 1993.

An alternative residual price was proposed by NAJ, which would price the residual value of the M–W price after the removal of the butterfat and protein values on the basis of ''other nonfat solids.'' The other solids price would be calculated by subtracting from the M–W price the sum of the value of 3.5 pounds of butterfat and the average protein content of milk included in the M–W price survey times the protein price. The result would be divided by the M–W other solids content (M–W nonfat solids minus M–W protein) to obtain the other solids price per pound. This proposed residual would have provided average values, per pound, of $0.40 and $0.41 in 1992 and 1993, respectively.

NAJ and Tri-State took exception to the revised recommended decision's placement of the residual value of the M–W price, after butterfat and protein are accounted for, on a fluid carrier component. These two groups advocated the position contained in their proposal that the residual value should be placed on other nonfat nonprotein solids. The groups contended that the solids in milk have value, allow manufactured products to hold water, and thus should be included in the MCP plan. They argued that the fluid carrier residual would not provide the correct incentive for producers.

There is no readily available measure of the market value of the other nonfat solids. The nonfat nonprotein solids component principally consists of lactose. The other solids price would represent not only the value of the lactose and ash, but would include an adjustor between the butterfat and protein component values of milk, which are determined by the market value of those components in dairy products, with a competitively set producer pay price (the M–W). While there is a value to lactose, attributing the entire residual value of milk to the nonfat nonprotein component would overstate the true economic value of lactose after accounting for processing costs and ignore the value of water in milk. It would be inequitable and uneconomical to place the residual value of milk on lactose instead of on the residual fluid volume. The other solids price may send a signal to producers to produce higher solids while sending a conflicting signal to manufacturers.

Because the M–W price is a basic price for milk, at least one of the components in the payment plan must represent the difference between a competitively-set pay price (the M–W) and the product-derived component prices. The fluid carrier is this component.

In addition, if the other solids price had a negative value, either the protein or butterfat price would need to be adjusted in order for the other solids price to retain at least a value of zero. If this situation were to arise, the adjusted protein price, for example, would no longer represent the true market value associated with protein. Consequently, producers and handlers would receive an inappropriate economic signal from the adjusted price.

The residual skim value of the M–W, after accounting for protein, should be placed on the fluid carrier component. Hearing record evidence indicates that the M–W price represents various factors that may not have a known market value, such as various premiums or pure competition for milk supply. The fluid carrier value would represent these factors. The hearing record also shows that moisture standards exist for all dairy products. The fluid carrier component recognizes the fact that the water in milk does hold value for the processor and the producer. Lastly, the correct economic signals relating to butterfat and protein will be sent to both producers and processors if the residual calculation is negative. The function of the residual is to connect the value of milk components in manufactured dairy products with a market-determined price for milk used in those products.

Miscellaneous. The butterfat and protein component prices will be expressed on a per-pound basis to the nearest one-hundredth cent. Analysis has shown that by expressing these prices to the nearest one-hundredth of a cent, the accuracy of the prices is enhanced significantly over expressing the prices to the nearest cent. The fluid carrier price will be expressed on a per hundredweight basis, rounded to the nearest whole cent.

For the purpose of allocating protein and fluid carrier to the classes of use, the assumption will be made that the protein and fluid carrier cannot easily be separated. The protein and fluid carrier will therefore be allocated proportionately based on the percentage of protein and fluid carrier in the skim milk received from producers.

In contrast to other orders that have multiple component pricing provisions, this decision incorporates only one protein price. The pooling of the components to include the Class I skim portion is incorporated within the computation of the producer price differential. This feature of the pricing plan allows for the elimination of separate handler and producer protein prices, and resulting confusion over which price, handler or producer, should be used in different situations. In addition, a handler's per-pound price for protein is the same whether the handler is buying milk from producers or from other handlers.

The producer price differential, which represents the additional value of Class I and Class II milk in the pool and any

positive or negative effect of Class III–A, will be determined by computing for each handler, and then accumulating for all handlers, the differential value (from Class III) of the Class I, Class II, and Class III–A product pounds. The differential value is adjusted, when appropriate, for shrinkage and overage, inventory reclassification, receipts of other source milk allocated to Class I, receipts from unregulated supply plants, and location adjustments.

For the purpose of eliminating differences between handler and producer component values, the value of the Class I skim milk and the values of the protein and fluid carrier contained in the skim milk allocated to Class II and Class III will be added to, and the values of the protein and fluid carrier contained in all producer milk subtracted from, the differential pool. The difference in the somatic cell adjustment on the value of protein in Class II and Class III and on producers' value of protein also will be absorbed in the differential pool. The accumulated total for all handlers then will be adjusted by total producer location adjustments and one-half the unobligated balance in the producer-settlement fund. The resulting value then will be divided by the total pounds of producer milk in the pool, with an amount not less than six cents or more than seven cents per hundredweight deducted. The result is the producer price differential to be paid to producers on a per hundredweight basis.

It is possible for the producer price differential to be negative. A negative producer price differential can result for two reasons. Any one or more of the Class I, II, or III–A differential prices may be negative and/or the minus adjustments may be large enough to offset any positive contribution from the differential prices. A negative producer price differential would be equivalent to a uniform price less than the Class III price.

The Leprino panel testifying at the initial hearing session suggested that payment for protein be based on true protein rather than total Kjeldahl nitrogen because only true protein has real value to processors. In comments filed after the revised recommended decision, Leprino encouraged the Department to develop information concerning the testing for true protein in the future.

Testing for true protein may have considerable merit. However, the hearing record lacks sufficient discussion of the benefits of specifying testing for true protein versus total protein. Approved testing methods currently vary among states, and the orders at this time should not mandate specific protein tests. If more and more states begin to mandate specific types of protein testing, it may become necessary to specify such testing in the orders. When (or if) the industry does move to testing for true protein, this decision should not be viewed as a hindrance to that conversion. In no way does this decision mandate a specific testing procedure. At such time as a change to testing for true protein may occur, a change in the 1.32 factor may be necessary.

4. Somatic cell adjustment. The value of milk should reflect the level of somatic cells contained in that milk. The adjustment in value should be made by adjusting the protein price paid by handlers for Class II and Class III milk, and the protein price paid to producers, for the somatic cell count (SCC) of the milk. This decision modifies the revised recommended decision, in which a somatic cell count adjustment would have been made to protein prices paid to producers for all classes of milk. The somatic cell adjustment recommended is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein.

Adjusting protein prices paid to producers by SCC was proposed during the initial hearing as part of a multiple component pricing system and was included in the recommended decision. Three fluid milk processors and a trade association for fluid milk processors filed exceptions to the recommended decision. Although this specific issue was outside the scope of the reopened hearing notice, two witnesses at the reopened hearing session testified against inclusion of a somatic cell adjustment in addition to filing exceptions to the recommended decision and briefs after the reopened hearing.

Each of these four parties opposed the recommended application of an SCC adjustment on milk used in Class I. Support for the SCC adjustment on Class I milk was stated in MMPA's post-hearing brief. Following is a summary of the initial hearing somatic cell testimony, exceptions to the original recommended decision, reopened hearing testimony, briefs filed after the reopened hearing, and exceptions to the revised recommended decision. Most of the exceptions, reopened hearing testimony, and briefs reiterated what was presented during the initial hearing and in post-hearing briefs. Unless specified, the following evidence was given at the initial hearing.

The director of milk sales for MMPA stated that the functional value of protein in the production of manufactured dairy products and its role in providing wholesome flavor and nutritional value in fluid milk products is affected by the SCC level of the raw milk supply. Therefore, the witness asserted, elevated SCC levels and raw bacteria counts diminish the functional value of all milk. According to the witness, the damage is irreversible and cannot be restored by a mechanical process at a dairy plant.

The MMPA witness testified that high SCC levels are accompanied by an increase in the amount of undesirable enzymes in milk as well as an increased susceptibility of the fat component to attack by these enzymes. The witness explained that the undesirable enzymes attack the fat in milk and release free fatty acids. The witness stressed that even at very low concentrations, free fatty acids are responsible for producing off-flavors in any dairy product that contains milkfat. The MMPA witness noted that research has shown that the free fatty acid content of raw milk with high SCCs is higher than that of raw milk with low SCCs. The witness also pointed out that the enzymes are able to survive normal pasteurization and continue the process of deterioration of the flavor of finished fluid products, thus reducing shelf life. Therefore, he testified, protein payments to producers should reflect the influence of somatic cells on the quality of all milk.

The director of member services and quality control for MMPA testified that mastitis, an inflammation of the mammary gland, is a reaction to a cow's immune system fighting off invading bacteria. The witness explained that white blood cells and epithelial cells known as somatic cells are secreted during the process to destroy the invading bacteria. The witness stated that the level of somatic cells indicates, and is proportionate to, the infection level of a cow's udder.

Another witness testified for MMPA that somatic cells seem to have an impact on milk quality through their ability to cause changes in the enzymatic characteristics of milk. The witness explained that the enzymes generated by somatic cells degrade the casein and change its functional attributes. He pointed out that some changes include higher losses in cheese yield, differences in flavor characteristics, and changes in other functional characteristics that may weaken the structure of curd in a curd formation when making a product. The witness stated that high SCCs in milk cause an increased rate of rancid off-

flavors, which produce a flavor that would be noticeable to a consumer. The witness explained that free fatty acids are one component that determines the shelf life of a fluid product and correlates to rancid off-flavors.

MMPA's witness went on to say that the enzyme which causes the damage is always present in an inactive form in milk. The active form of the enzyme, once it is produced in milk, is heat-stable and therefore unaffected by pasteurization or ultra-high temperature processing. The witness explained that most of the damage to protein occurs while milk is in the udder of the cow. However, if milk is cooled quickly and held at refrigeration temperature, further damage is minimized. The witness explained that producers can reduce the average somatic cell count of their milk through better management and proper adjustment and maintenance of milking equipment.

The MMPA quality control employee stated that SCC standards were adopted as a measure of milk quality and are included in the Pasteurized Milk Ordinance (PMO) because of the recognition of their public health significance in the milk supply. The witness explained that the condition of mastitis and the subsequent increase of somatic cell levels decrease the quality of milk by reducing the levels of butterfat, lactose, total casein and total solids in milk and increasing whey protein, chloride, and sodium levels.

The MMPA witness noted that SCCs have been included as a criterion within quality premium programs throughout the United States, including Michigan, for several years. The witness testified that all milk marketing cooperatives in Michigan use the Optical Somatic Cell Count (OSCC), an electronic method, for measuring levels of somatic cells. According to the witness, the OSCC method is the most accurate method available for testing somatic cells and is a method approved by the Association of Official Analytical Chemists (AOAC). Another MMPA witness stated that instruments are available and currently are being used to test a large number of samples on a reliable basis for both protein and somatic cell count.

The MMPA witness noted that the SCC standards under the PMO would be lowered from 1,000,000 to 750,000 on July 1, 1993. The witness pointed out that under the PMO, all Grade A producers are required to be tested a minimum of four times in six months for somatic cells. He explained that most producers whose milk is pooled under Federal Order 40 have been tested five times a month for the past several months, with test results reported to the producers. The witness stated that MMPA's average SCC for 1992 was 308,000, according to record data. However, he stated, this average is based upon one SCC test per farm per month. The witness explained that in comparing data collected for the past six months, one test per month versus five tests per month, the cooperative's average SCC could increase by as much as 50,000. Another MMPA representative testified that the proposed neutral zone had been reduced from the initial proposal to between 300,000 and 450,000 to better reflect current data with regard to average SCCs in Order 40.

According to an MMPA witness, an adequate number of times per month to test a herd for SCC would be the number of times currently used for butterfat, four or five times. The witness stated that the functional value of milk changes as soon as the SCC exceeds about 100,000. He stated that one of his research studies, which was conducted under ideal conditions, indicated that as SCCs change from zero to 1,300,000, cheese yields decline an additional two to three percent. The witness also stated that there is a maximum yield loss of about two percent when SCCs change from 100,000 to 750,000.

MMPA supported the SCC adjustment on all milk in a brief filed after the reopened hearing. The brief asserted that the recommended decision recognizes the impact that SCC levels have on the functional value of milk for both fluid and manufacturing processors. The brief noted that the difference in the Class I differentials between the Ohio and Indiana orders greatly exceed the four to six cents per hundredweight identified as the potential effect on a Class I handler's price resulting from the somatic cell adjustment.

The regional dairy director for National Farmers Organization (NFO) testified in opposition to the inclusion of a somatic cell adjustment. The witness stated that uniformity in the pricing provisions of Orders 40, 33, 36, and 49 is of overriding importance and urged the Secretary to adopt the same MCP programs for all orders. The witness argued that because of the degree of overlap in milksheds and sales between these orders, differences in order provisions will cause confusion and disorderly marketing conditions.

The NFO witness observed that SCC is only one of several factors in NFO's and other quality programs. The witness stated that the incorporation of an SCC adjustment would destroy the flexibility of voluntary quality programs. The NFO witness stated that adoption of an SCC adjustment would overstate the importance of SCC among other factors used in determining milk quality and elevate SCCs to a disproportionate role in determining the value of milk. He argued that this disproportionate emphasis on SCCs is exacerbated by the inherent vagaries of testing for SCCs.

The NFO representative stated that somatic cell count is one of the more volatile variables in the measurement of milk quality and can vary significantly within the same herd. The witness noted that a MMPA witness testified at the multiple component pricing hearing for Orders 33, 36, and 49 that tests for SCC are much less precise than tests for butterfat or protein. The NFO witness explained that the variations in SCC tests within a herd during a month are much greater than for butterfat or protein.

A Kraft witness stated at the initial hearing that Kraft supports the inclusion of somatic cell adjustments in any component pricing plan. The witness noted that testimony and evidence in previous hearings, as well as in this hearing, reveal that there is a reduction in cheese yield as somatic cell levels increase, thus lowering the value of protein in milk.

During the initial hearing, the witness for Country Fresh, a fluid milk and Class II processor in Order 40, supported an SCC adjustment on all classes of milk, but recommended that the size of the proposed adjustment be reduced substantially. Under his recommended changes to the proposal, the witness stated that based on the peak cheese prices during 1992, the maximum plus and minus somatic cell adjustments would have been 15 cents a hundredweight. He argued that combined, this would create a range of about 30 cents, as the most the market can bear without creating a disincentive against receiving high-quality milk.

The witness noted that effective July 1, 1993, the cap on the SCC for Grade A milk will be 750,000. The witness and Country Fresh's brief argued that the proposed neutral zone of 300,001 to 500,000 and MMPA's modified proposed neutral zone of 300,001 to 450,000 are too high. The witness testified that the average somatic cell count in the Southern Michigan marketing area is approximately 340,000, according to the market's largest cooperative. Therefore, the witness suggested that the appropriate neutral zone be 300,000 to 399,999 and the highest bracket 700,000 and up.

The witness continued by stating that if the somatic cell program is modified as suggested, Country Fresh could support its inclusion in the Southern

Michigan order. He testified that Country Fresh urges that the somatic cell program be tried in a moderate rather than a radical manner. Otherwise, the witness claimed, chaotic marketing conditions could be created which would result in a new hearing being held in the not-too-distant future to amend the order. Country Fresh's brief further noted testimony of MMPA, Leprino, and NFO which asserted that there are other factors involved in high quality milk besides SCC.

In an exception to the recommended decision, in testimony during the reopened hearing, and in a post-hearing brief, Country Fresh changed its position and expressed opposition to an SCC adjustment to milk used in Class I. During the reopened hearing and in a post-hearing brief, Country Fresh proposed to modify the recommended Southern Michigan somatic cell adjustment to be similar to the SCC adjustment on Class II, III, and producer milk adopted in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing orders. Country Fresh's brief filed after the reopened hearing stated that the handler currently does not adjust for SCC on the milk it purchases.

The Country Fresh witness testified that uniformity of pricing provisions across Federal orders is important because a substantial overlap in Class I sales and raw milk procurement exists between Indiana, Ohio, and Michigan. The witness stated that the SCC adjustment on Class I milk in the recommended decision does not apply in either the Indiana or the Ohio Valley Federal orders.

Country Fresh's brief asserted that implementing an SCC adjustment on Class I milk in Southern Michigan but not the surrounding areas would change the Class I price relationship between these orders. The brief stated that disruptive and inequitable marketing conditions would result for handlers regulated under the Southern Michigan order relative to handlers regulated under orders in which no SCC adjustment is made. The brief contended that evidence presented at either the initial or reopened hearing did not justify an increase in the cost of Class I milk in Southern Michigan relative to neighboring orders.

The Country Fresh witness estimated that on a total milk supply basis, the SCC adjustment for each Class I handler could potentially affect the Class I price from four to six cents per hundredweight. The witness stated that the impact of SCC has not been this great in the Indiana Federal order, where the adjustment is not based on the total milk supply as was recommended in Southern Michigan.

Country Fresh's exception and brief agreed that lower SCC levels have some value to fluid milk processors. However, both the exception and brief argued that no difference exists whether milk is processed in Michigan or in Indiana, thus no distinction should be made between these markets based on SCC pricing. In addition, the witness stated that it is not possible to relate somatic cell levels to a value on Class I milk or to the specific value adjustments recommended in the decision.

Witnesses for, and briefs and exceptions filed by, the Kroger Company (Kroger), Dean Foods, and the Milk Industry Foundation (MIF) opposed the inclusion of somatic cell counts as part of the pricing structure as it would relate to Class I fluid handlers. Kroger operates a pool distributing plant regulated under Order 40. Dean Foods has been marketing milk in the Southern Michigan market for over 30 years and operates a bottling plant known as Liberty Dairy in Evert, Michigan. MIF is a national trade association with 215 member companies located in all 50 states that process nearly 80 percent of all fluid milk products nationwide.

The division manager of milk procurement for Kroger argued that there is no economic justification to include a somatic cell adjustment on Class I sales or any Class II and III products such as raw fluid milk inventory, half and half, eggnog, Class III shrinkage, and sales of surplus cream. According to the witness, the price or product yields of these items are not influenced by the amount of protein in the raw milk used in their manufacture. Additionally, the witness argued, adoption of the MMPA proposal would make it impossible for processors to recover the cost of these products and would create inequitable and uncompetitive Class II and Class III market conditions for Order 40 processors compared to their competitors regulated under other orders.

The Kroger representative continued by stating that Kroger is not opposed to a proposal which introduces multiple component pricing with protein pricing and a somatic cell adjustment for milk processed in Class II and III used-to-produce products. The witness stated that if the MMPA proposal is modified accordingly the MCP plan combined with a somatic cell count adjustment would have a potential benefit to producers and processors. Kroger's opposition to an SCC adjustment on Class I milk was reiterated in an exception to the recommended decision.

The Kroger witness and MIF's brief argued that adoption of an SCC adjustment on milk used in Class I would result in disruptive and inequitable marketing conditions for Order 40 handlers versus their competitors in other markets where the provision does not exist. The Kroger witness and MIF noted that a somatic cell count adjustment would eliminate the advance knowledge fluid milk processors currently have of the Class I price and force handlers to estimate the value of somatic cells for the current month's price. The Kroger representative claimed that the proposal would influence the value of Class I milk based on the SCC level in raw milk.

MIF expressed concern that milk processors would incur increased costs from milk with low SCCs that they would be unable to recover from product sales because consumers are unable to differentiate between low and high SCC milk. MIF's exception also contended that increased costs from both procuring low SCC milk and more frequent product testing would lead to higher retail prices for milk and a decrease in fluid milk sales. Exceptions to the recommended decision, testimony during the reopened hearing, and post-hearing briefs filed by MIF reiterated these arguments opposing an SCC adjustment on Class I milk.

According to MIF's brief, there is no quantifiable scientific evidence that the level of somatic cells results in any appreciable difference in the attributes of fluid milk, particularly attributes which would be discernable by consumers. MIF described the testimony of MMPA as failing to make an absolute statement regarding quantifiable economic benefits to fluid milk use resulting from lower somatic cell counts. MIF stressed that there is no need to pay a premium for reduced SCCs when the permissible count is being reduced by regulations. In briefs, MIF and NFO questioned whether it is appropriate for the Federal order system to adopt a policy and administer practices which allocate economic advantages and disadvantages among certain segments of the dairy industry.

The witness for Dean Foods stated that there is no scientific evidence which shows that handlers or consumers benefit from lower somatic cell counts and that the inclusion of SCC adjustments in the pricing structure of producer milk within the Federal order system would ultimately be borne by the consumer. However, the witness stated, Dean Foods supports the

inclusion of SCC premiums in Class II or Class III producer milk where there is evidence of improved yields due to reduced levels of somatic cells.

Dean Foods' exception to the original recommended decision reiterated arguments made by Country Fresh and MIF. Additionally, Dean Foods' exception noted that a six cent per hundredweight adjustment in the Class I price would equal 0.005 cents per gallon and would amount to additional costs between $180,000 and $200,000 per year for the Liberty Dairy bottling plant. The exception stated that the plant, at which 85 to 90 percent of receipts are used in Class I, currently has a premium program which includes an SCC adjustment as one of the factors in pricing milk. Dean Foods noted, however, that SCC alone is not considered to be a quality enhancer for Class I products.

The Leprino panel that testified in the original hearing stated that Leprino supports the inclusion of SCC adjustments to value protein properly as long as other basic milk quality criteria are achieved, notably low psychrotrophic bacteria count and low raw bacteria count. Additionally, the panel also testified that Leprino opposes quality adjustments for Class I milk unless it can be clearly demonstrated that there is a discernable benefit to the Class I handler. The panel recommended that yield factors used to value somatic cell counts should be conservative, given the conflicting scientific evidence, and should be uniform across Federal orders.

According to testimony at the original hearing by the Leprino production manager, Leprino participates in milk quality programs based on several parameters, providing incentives for producers with high-quality milk and disincentives for inferior-quality milk. The witness noted that in the MCP hearing for Orders 33, 36, and 49, three studies were introduced into evidence and referenced in the recommended decision to justify adjusting the protein payment by SCCs. However, the witness argued that each study shows different yield impacts at different SCC levels in raw milk. The witness also noted a study which indicates that SCCs may affect yields, but day-to-day changes in milk composition obscure the effect. The witness pointed out that a study by one of the MMPA witnesses states that payment for milk quality should not rest solely on somatic cell counts.

The Leprino witness testified that scientific evidence indicates that the greatest yield benefits are at a level of 100,000 to 200,000 and greatest yield losses are above 500,000. The witness noted that the SCC limit under the PMO soon will be adjusted to 750,000. He stated that Leprino's proposal offers an adjustment of plus 20 cents to minus 20 cents for legal Grade A milk and includes a prerequisite of other milk quality conditions that can affect cheese yield. The witness recommended that USDA use a conservative approach given the Department's limited experience with mandated milk quality criteria for payment purposes. The witness urged that the adjustments be uniform between all Federal orders to ensure orderly marketing.

The Leprino quality assurance director testified that the two methods for testing for the level of SCC are direct microscopic cell count (DMSCC) and optical somatic cell count (OSCC). She stated that the DMSCC is a tedious method which takes extensive training and precision to perform and is used to calibrate electronic methods. She estimated that equipment for performing SCC tests by the DMSCC method costs about $4,000. According to the witness, the OSCC methods are easily performed, generally more precise, and are less labor intensive than the DMSCC. The witness stated that the unit cost for equipment is between $40,000 and $100,000 and, when combined with infra-red component testing systems, could range from $150,000 to $200,000.

The Leprino quality witness expressed opposition to the proposed order amendment which would allow no adjustment to a producer's protein price if an average SCC was not available for the month. The witness claimed that processors would not be able to reduce payments on high SCC milk if testing is not mandated. Therefore, the witness urged that testing be conducted no less than five times per month with at least one test per week. Furthermore, the witness recommended that if no tests are available, the handler should assume the milk falls in the highest adjustment category of 750,000 SCC per milliliter.

The quality witness for Leprino testified that in addition to SCC, raw bacterial count (SPC) and psychrotrophic bacteria also have a direct influence on milk quality and hence its value to a processor. The witness stated that SPC gives an indication of sanitary practices around milking, and the transfer and storage of milk. The witness claimed that SPC has been recognized and widely used as a basis for valuing milk. She added that psychrotrophic bacteria are those bacteria capable of appreciable growth under commercial refrigeration, regardless of the optimal growth temperature of the organisms. According to the witness, such bacteria degrade protein and fats, causing off-flavors, odors, slime formation, and reduction in cheese yields.

Leprino's exception to the recommended decision stated that the adoption of one quality attribute (SCC) as a requirement for milk payment purposes without consideration of the other raw milk quality attributes opposes all the market practices currently operating in the Southern Michigan order. The exception urged that if milk quality is to be regulated under the order, the adopted model should be similar to those currently used by almost all of the handlers. The exception asserted that this program would include multiple minimum raw milk quality attributes such as raw bacteria counts and psychrotrophic bacteria counts.

In a brief filed after the reopened hearing, NCI contended that a specific schedule of SCC adjustments, such as was included in the recommended decision, should not be included as part of the order. The brief suggested that the order provisions should include authority for handlers to submit individual plans for market administrator approval to pay premiums or make deductions based on SCC as long as the total payment to all producers reflects the monthly minimum pay price under the order. The brief contended that this system would permit individual handlers the option to use adjustments that reflect the effect of low or high SCC milk on manufactured product production without requiring a rigid schedule of order-specified adjustments in milk costs based on various levels of SCC.

Although there was little opposition to the incorporation of some form of somatic cell adjustment, a number of exceptions were filed in response to the revised recommended decision on this issue. The exceptions focused primarily on the effect the proposed somatic cell adjustment would have on fluid milk handlers. None of the comments filed in response to the revised recommended decision supported a somatic cell adjustment on Class I milk.

Dean Foods, NCI, Prairie Farms Dairy, Inc., and Kroger each opposed including any somatic cell adjustment within the Federal milk order program. Dean Foods contended that the quality of milk and milk products has been and should continue to be tested and enforced by other agencies through the PMO. However, Dean Foods did not oppose an adjustment on Class III milk, stating that if any segment of the dairy industry is able to promote a component in milk or enhance quality that will increase

profitability, that component or quality factor should be included in Federal milk orders.

Thirty of the 31 exceptions received to the revised recommended decision commented on the proposed somatic cell adjustment to protein prices paid to producers for all classes of milk. Six of the exceptors had participated in either or both of the hearings in this proceeding: Country Fresh and Parmalat (joint brief), Dean Foods, Kroger, Leprino, MIF, and NCI. Of the other 24 exceptions received, only one handler is located physically in the Southern Michigan marketing area. Most exceptions primarily addressed the issue of a proposed somatic cell adjustment on Class I milk.

Most exceptions regarding a somatic cell adjustment repeated opposition to a somatic cell adjustment on Class I milk as set forth by MIF in testimony, post-hearing brief, and exceptions to the revised recommended decision. The exceptors all gave the same six reasons for their opposition: 1) there was not enough scientific evidence at the hearing to support a somatic cell adjustment on Class I milk, 2) somatic cells are not the only quality factors that should be included, 3) a somatic cell adjustment on Class I milk would cause disruptive and inequitable marketing conditions for fluid handlers, both between and within marketing areas, 4) fluid handlers cannot recover the added cost of the somatic cell adjustment from the market place, 5) a somatic cell adjustment would eliminate advance Class I pricing, and 6) Federal orders should not be involved in quality issues.

Dean Foods' exception contended that placing a somatic cell adjustment on Class I milk does not conform to the Agricultural Marketing Agreement Act of 1937 because the price will not be ''uniform as to all handlers.'' Dean Foods claimed that including a somatic cell adjustment on all classes of milk would add to the profitability of manufacturing handlers but result in a loss of profitability to fluid milk handlers. This would occur, according to the exception, because while both types of handlers would be charged more for low SCC milk, the manufacturing handlers would be able to recover the cost (through increased yields) while the fluid milk handlers would not.

Regarding arguments that the advance nature of Class I price announcements would be eliminated, Dean Foods' exception disputed the revised recommended decision's comment that any change would be expected to be minimal. Dean Foods contended that any change that is unknown is not ''minimal'' when bidding for contracts.

Dean Foods' exception also contended that basing the somatic cell adjustment formula on cheese yields proves that fluid milk does not gain a quantifiable economic benefit from milk with low somatic cells.

Country Fresh and Parmalat's joint exception noted that under the revised recommended decision, the somatic cell adjustment on Class I milk would benefit producers by rewarding lower herd SCC. The brief contended that the somatic cell adjustment would give Class I handlers an incentive to procure lower quality, thus less costly, milk.

Sani-Dairy filed an exception to the somatic cell adjustment included in the revised recommended decision. This handler, partially regulated under the Eastern Ohio-Western Pennsylvania Federal milk order (Order 36), which adjusts the protein price for the somatic cell count in Class II and Class III milk, claimed that the somatic cell adjustment on Class II milk has increased Sani-Dairy's costs. The exception contended increased costs have occurred because 1) SCC levels in milk are improving due to higher milk standards, 2) the calculation tables for Order 36 are set to higher counts than the milkshed average, and 3) difficulty exists in recouping extra costs, particularly from cottage cheese, in a plant with mixed utilization of milk.

In addition to opposing a somatic cell adjustment on Class I milk, Anderson-Erickson also opposed a somatic cell adjustment on specific Class II products (dairy desserts and ice cream).

A somatic cell count adjustment should be adopted because it reflects the value of the level of somatic cells contained in milk. There was significant testimony during the initial hearing that elevated levels of somatic cells diminish the functional value of milk in all uses. A reduction in the yield of cheese and other curd-based manufactured products, an increased rate of off-flavors, and a reduction in the shelf-life of fluid products all result from elevated levels of somatic cells.

The recommended decision proposed that the adjustment be applied to protein prices received by producers for all producer milk, regardless of the class in which it is used. Such an application would have avoided including the difference between the handler and producer somatic cell adjustments in the computation of the producer price differential; a procedure that, during some months, could result in a significant adjustment in the producer price differential per hundredweight. The recommended application also would have assured that all handlers' obligations would reflect the quality of the milk they receive.

Although many of the objections to a somatic cell adjustment on all milk are not persuasive, as noted in the revised recommended decision, this decision has been changed to include an adjustment to the value of milk based on the level of somatic cells contained in all producer milk and in Class II and Class III. As a result, the somatic cell adjustment will be included in the pool computation, so handlers will have to report producer somatic cell count information for all producers with their reports of receipts and utilization.

The decision to omit application of a somatic cell adjustment on milk used in Class I is based on several factors. As observed by exceptors, the hearing record contained little if any testimony or evidence to quantify the economic effect of varying somatic cell levels on Class I milk, although there was considerable testimony as to the effect somatic cells have on shelf life, off flavors and rancidity in fluid milk products. Because no specific data about the value of using high-quality milk in fluid products was presented and opposition to the application of a somatic cell adjustment on Class I milk was so strong, the somatic cell adjustment will not be applied to milk used in Class I as a result of this proceeding.

The proponents' proposed neutral zone of 300,000 to 450,000 has been reduced to between 301,000 and 400,000 to better reflect the market's average somatic cell count and to correspond more closely with the multiple component pricing plan adopted for Orders 33, 36 and 49. Although increments of 100,000 were proposed, this decision breaks down somatic cell adjustments into increments of 50,000. Increments of 50,000 assure producers that if slight testing inaccuracies (which may be greater in the case of somatic cells than for butterfat or protein) cause their protein price to be adjusted to the next level, that adjustment will not represent the entire value of a 100,000 increment of SCC.

In addition, because of the reduction in the maximum permissible SCC, 750,000 and over will become the maximum increment for which protein prices will be adjusted for somatic cell content. It is possible that some Grade A producers may have an average SCC of 750,000 or more for a month without losing Grade A status because of differences between the market administrators and health departments in the number of leucocyte (somatic

cell) tests taken in a given period of time. In cases where a handler has not determined a monthly average SCC for a producer, it will be determined by the market administrator.

Because the value of milk has been shown to be affected by the level of somatic cells, appropriate adjustments must be determined to apply to the various levels of somatic cells. These adjustments will be used to adjust handlers' values of protein in Classes II and III and the protein prices paid to individual producers. The somatic cell adjustment to handlers' value of milk will be computed by multiplying the appropriate constant for each handler's weighted average somatic cell count by the monthly average 40-pound block cheese price at the National Cheese Exchange as published monthly by the Dairy Division. The resulting somatic cell adjustment applied to the protein in milk used in Class II and Class III will be combined with plus and minus somatic cell adjustments to the protein in producer milk. Because of the necessity of pooling the somatic cell adjustments in order to avoid affecting the Class I price of milk to handlers, it will be necessary for the somatic cell information for all producer milk to be reported with handlers' reports of receipts and utilization.

The inclusion of this somatic cell adjustment will tend to effectuate the declared policy of the Act by encouraging orderly marketing through the standardization of the basis for payment on the level of somatic cells in the milk and the standardization and checking of the testing and test procedures used for determining the somatic cell counts. Even though testimony indicated that there are other quality factors that are important in overall milk quality, there was no determination of their effect on milk quality or any attempt to compute a relevant associated value. Therefore, somatic cell count will be used as the quality adjustment factor in this decision.

The somatic cell adjustment to be used in determining protein prices paid to producers is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein. The evidence contained in the hearing record shows that there is a one percent reduction in cheese yields as somatic cells increase to 100,000, and cheese yields decline an additional two to three percent as somatic cells increase from 100,000 to 1,000,000. There is also a maximum yield loss of about two percent as SCCs increase from 100,000 to 750,000. This decision reflects the proportional change in cheese yields as the SCC level changes.

The constant to be used for calculating somatic cell adjustments was computed by dividing the change in cheese yields attributable to changes in somatic cell counts by a representative protein test of producer milk (3.2 percent). As proposed, the adjustment to the producer protein price for somatic cell content would be computed by multiplying the cheese price by a factor that varies with the somatic cell level and dividing the result by the representative protein percent used in calculating the handler protein price.

MMPA's proposed factors varied from .20 for a somatic cell count below 100,001 to -.20 for a somatic cell count above 750,000. Leprino's proposed factors varied from .20 to -.25, and Country Fresh proposed factors varied from .128 to -.128. This decision includes factors that vary from .25 to -.25 and are based on the reduction in cheese yield associated with varying somatic cell counts. Although .20 was the maximum positive factor proposed, .25 should not overcompensate producers for producing the highest quality milk.

The factors adopted in this decision are similar to the ones proposed, with the largest difference occurring at SCC levels below 151,000 and above 500,000. Record testimony reveals that milk containing between 100,000 and 200,000 SCC yields the greatest benefits and milk containing more than 500,000 SCC yields the greatest losses in cheese production. Evidence also reveals that SCC per milliliter of milk typically ranges between 200,000 and 400,000. Therefore, it is logical to assume that the majority of Order 40 producers' SCCs will fall within the 200,000 to 400,000 range.

As shown in Table 1, the factors to be used in adjusting handler and producer protein prices for somatic cell content do not reflect a linear relationship between cheese yields and somatic cells because the relationship between these factors is not linear. Dividing these factors by a standard protein content of 3.2 yields the constants shown in Table 1 to be used for computing the somatic cell adjustment. Use of a constant substantially simplifies the computation of the somatic cell adjustment without changing the corresponding value. This result occurs because the protein percentage must change by a considerable amount before the adjustment will change. Therefore, the somatic cell adjustment will be calculated by multiplying the constant corresponding to each somatic cell count interval by the average price of 40-pound block cheese at the National Cheese Exchange as reported monthly by the Dairy Division.

As an example, using the 1993 average 40-pound NCE block cheese price of $1.2857 per pound, the adjustment results in an estimated range of 20 cents per pound of protein (or 64 cents per hundredweight of 3.2 percent protein milk). The range of the adjustment is from a somatic cell count of fewer than 50,000 (plus 10 cents per pound of protein) to a somatic cell count of 750,000 or above (minus 10 cents per pound of protein).

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.250	.078125
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.0000000
351,000 to 400,000	.000	.0000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT—Continued

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 to above	−.250	−.078125

Monitoring by the market administrator of somatic cell testing, which already clearly affects the payments made to most of the producers pooled under the Southern Michigan order, will assure as much uniformity and accuracy as possible in the testing procedures. Also, because over 50 percent of the milk pooled under this order is used in Classes II and III, application of a somatic cell adjustment to that proportion of the milk used by handlers will doubtless result in a favorable effect on the general quality of the milk in the marketing area.

The hearing evidence indicates that low SCC levels contribute to both increased yields of manufactured products and quality characteristics (taste and keeping) for milk and dairy products. In terms of yield, the economic benefits from low SCC levels are more tangible and measurable to manufacturing handlers than to fluid milk handlers. Placing a somatic cell adjustment on Class II and Class III milk is reasonable because milk quality will be reflected in product yields and manufacturing handlers will be better able to recover their costs than would fluid milk handlers.

The PMO states, ''Regulatory requirements have a fundamental purpose, protection of public health, and are not intended to and do not address microbiologic issues that relate to economic factors and consumer preference or acceptance of products such as cheese.'' The intent of placing an adjustment for somatic cell count under Federal milk order provisions is *not* to set standards for milk. Instead the intent is to recognize that the quality of milk, as measured by the SCC, is a factor in improving yields of cheese and other manufactured products and therefore is an indication of the economic value of the milk.

It should be remembered that as milk from farms is commingled, the SCC of the entire load will tend toward the average for the market. Over the course of a month, it is unlikely that the average producer milk receipts will vary more than 100,000 SCCs from the average for the market, even for handlers who make a concerted effort to attract a high-quality milk supply. The primary impact of the SCC adjustment would be felt by producers.

The argument that somatic cell counts have wider fluctuations than butterfat or protein tests is apparently valid. However, the hearing record does not contain evidence that any problems resulting from variability in testing outweighs the benefits of including SCC adjustments in the MCP plan. As specified in the Agricultural Marketing Agreement Act of 1937, one of the functions of the market administrator is ''Providing . . . for the verification of weights, sampling and testing of milk purchased from producers.'' 7 U.S.C. 608c(5)(E). Because the market administrator will now be verifying the sampling and testing of milk for somatic cells, the variation in somatic cell levels due to testing should be minimized much as the differences in butterfat tests due to testing variations were minimized when the Federal milk order program was first instituted.

The Agricultural Marketing Agreement Act of 1937 in 7 U.S.C. § 608c(5) authorizes the Secretary to adjust minimum prices paid to producers based upon the quality of the milk purchased. Therefore, the argument that somatic cells cannot be used as a criterion for adjusting a producer's pay price is invalid. Furthermore, the hearing record shows that the level and presence of somatic cells directly affect the quality and grade of milk in that SCCs above a certain level result in the loss of a producer's Grade A permit.

Record evidence indicates that SCC is only one of the factors that affect milk quality. However, there is not enough substantial evidence to include other factors, such as psychotrophic and raw bacteria count, as criteria used to determine milk quality for payment purposes. Testimony indicates that there may be merit in including other quality factors besides SCC in Federal milk order pricing, but further study of the role of such other factors in affecting the value of milk is needed. In any case, the inclusion of other quality factors in this proceeding goes beyond the scope of the hearing notice.

Because the NCI suggestion for individual handler SCC payment plans was made in a brief filed after the reopened hearing rather than being included in the notice for either the initial or the reopened hearing, interested persons had no opportunity for cross-examination. Therefore, the concept cannot be considered as an alternative to the proposed SCC adjustment schedule, as it is beyond the scope of the proceeding. It should be noted that adjusting the minimum producer milk price for SCC does not preclude other premiums paid by a handler.

In addition, although the Agricultural Marketing Agreement Act of 1937 in 7 U.S.C. 608c(5) does allow for adjustments to minimum pay prices on the basis of quality, such adjustments should be at a uniform rate for all producers in the market. Allowing each handler to have its own payment schedule as suggested by NCI would defeat the concept of uniform pricing to producers, eliminate the purpose of allowing quality adjustments under the order, and lead to disorderly marketing. Producers with identical milk shipping to different handlers within the same market could, and probably would, have different minimum order pay prices if each handler had its own quality or somatic cell payment plan.

5. Administrative assessment. The maximum allowable rate of assessment to be paid by handlers to cover the cost of administering the Southern Michigan order should be increased to 4 cents per hundredweight. The assessment would continue to be applied to the same milk to which the present assessment applies. The Act specifies that persons who are regulated shall pay the cost of operating the program through an assessment on the milk handled by regulated persons who are defined as

handlers under the order. The present 2-cent per hundredweight maximum allowable rate of assessment has been provided for the administration of Order 40 since the order became effective on December 1, 1960.

The 2-cent increase in the maximum allowable rate was proposed by MMPA. During the initial hearing, a witness for the cooperative association testified that the present ceiling on the deduction rate for administrative services does not adequately compensate the market administrator for all services rendered. In a post-hearing brief, MMPA stated that the market administrator should have the authority to collect revenue necessary to perform the duties required by regulations. There was no other testimony on this proposal at the hearing. NFO's brief expressed support for MMPA's proposal.

The Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Michigan Upper Peninsula orders (Orders 33, 36, 40 and 44) are administered under the supervision of a single market administrator, headquartered in Cleveland, Ohio. Prior to 1992, Federal Orders 33 and 36 were administered by another market administrator.

The Balance Sheets and Income and Expense Statements for the Administrative Fund are compiled by the market administrator and reported annually to regulated handlers as well as to other interested parties. Record data for the years 1990 and 1991 show that the administrative expenses associated with the operation of Orders 40 and 44 exceeded the income the market administrator received from assessments by $80,000. However, when the four markets were consolidated in 1992, income exceeded expenses by $400,000. The change indicates that Orders 33 and 36 are bearing some of the financial responsibilities of Orders 40 and 44.

The witness for MMPA stated that the current rates of assessment for Federal Orders 33 and 36 are higher than for Orders 40 and 44. Furthermore, the witness noted, the recent recommended decision for Orders 33 and 36 sets the maximum allowable deduction rate for administrative services at 4 cents per hundredweight.

Handlers and producers serving the market have jointly asked that a new multiple component pricing program be provided to adjust the value of milk used by regulated handlers and payments to producers. The implementation and administration of that pricing plan for Order 40 may require the purchase of some new laboratory equipment and the performance of additional administrative duties. Many of the testing expenses associated with the multiple component pricing plan would be paid for with money from the marketing service fund. However, because the value of milk used by handlers in Classes I, II and III would be established on the basis of the milk's butterfat, protein, fluid carrier, and somatic cell content, some of the expenses related to establishing the level of these factors in producer milk likely would be paid for with money from the administrative fund. Thus, there is no reason to expect the expenses of administering the order to decline.

Providing a higher maximum rate of assessment in the order does not mean that the higher rate will apply automatically when the amended order becomes effective. The amendment gives the market administrator the discretionary authority to set the rate at any level up to the maximum specified in the order. When the amended order becomes effective, the market administrator may decide that no change in the effective assessment rate is necessary or that some increase to a level less than the maximum allowed is warranted. Further, an increase in the maximum rate will assure that Order 40 will bear, with Orders 33 and 36, an equitable share of the cost of operating the market administrator's office.

6. Marketing service assessment. The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat, protein, somatic cell testing, and market information for nonmember producers should be increased to 7 cents per hundredweight under the Southern Michigan order. The increase is needed to assure sufficient revenue to cover the expenses incurred by the market administrator in providing such services to producers who are not members of a qualified cooperative association. Currently, the maximum allowable deduction for such services is 5 cents per hundredweight. Like the administrative assessment, this maximum rate has been effective since December 1, 1960.

During the initial hearing, MMPA proposed that the maximum allowable assessment rate for marketing services be increased to 7 cents per hundredweight. The MMPA representative testified that the market administrator provides services which involve verification of weights, samples and tests of milk received from producers, as well as providing market information to producers who are not members of a cooperative association. The witness and MMPA's post-hearing brief stated that in order for the market administrator to adequately perform the duties required by the order, he must be allowed to have the authority to collect the revenue necessary to provide those services. A post-hearing brief filed on behalf of NFO supported MMPA's proposal. There was no opposition to the proposal.

The Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Michigan Upper Peninsula orders (Orders 33, 36, 40 and 44) are administered under the supervision of a single market administrator, headquartered in Cleveland, Ohio. Prior to 1992, Federal Orders 33 and 36 were administered by another market administrator.

The Balance Sheets and Income and Expense Statements for the Marketing Service Fund are compiled by the market administrator and reported annually to nonmember producers as well as to other interested parties. Record data for the years 1990 and 1991 show that the expenses incurred by the market administrator in providing marketing services exceeded income by about $54,000. In 1992, when the statements for the four markets were combined, expenses exceeded income by approximately $116,000.

It is evident from the foregoing that the 5-cent deduction from producer payments for marketing services in the Southern Michigan order has been inadequate to cover the costs incurred in the performance of such duties by the market administrator. It also shows that the financial situation worsened when the statements were combined in 1992. The increase will align the maximum marketing service assessment rate of Order 40 with that recently adopted for Orders 33 and 36. In addition, the multiple component pricing plan recommended in this decision will require additional testing activities. Because not all handlers are equipped to make all of the determinations that will be required under the amended order, many of these duties will have to be performed by the market administrator responsible for administering the order.

The 7-cent maximum rate of deduction for marketing services proposed by MMPA should be provided in Order 40. The higher rate should give the market administrator the necessary flexibility to conduct effective marketing service programs, including any additional duties relating to the implementation and administration of the new pricing program that will be incorporated in the order.

Provision of a 7-cent maximum rate does not mean that the 7-cent rate will

become effective automatically. Maximum rather than fixed rates of deduction are specified in the orders because the relationship between income and expenses for the fund is subject to many variables. Changes in the pounds of nonmember milk marketed and the rate assessed on these marketings increase or decrease the income of the marketing service fund, while changes in order requirements and the expenses of providing marketing services result in changes in total outlays.

An increase in the maximum allowable assessment will give the market administrator the discretionary authority to set the rates of deduction for marketing services at levels necessary to cover the expense of providing marketing services. The market administrator may use his discretionary authority to determine if rates below the upper limits adopted in the amended order will provide sufficient funding to conduct an adequate program for nonmember producers.

9. Conforming changes. To accommodate multiple component pricing, a number of changes need to be made in the current order provisions of the Southern Michigan order. To compute a handler's obligation and the producer price differential, several prices need to be defined. The Class I differential price should be defined as the difference between the current month's Class I price and the current month's Class III price. The Class II differential price should be defined as the difference between the current month's Class II price and the current month's Class III price. The Class III–A differential price should be defined as the difference between the current month's Class III–A price and the current month's Class III price.

These differential prices should not be confused with the fixed values that are added to the M–W price for the second preceding month to arrive at the Class I and Class II prices for the current month. It should also be pointed out that these differential prices may be negative, which currently happens when the M–W price is greater than any of these prices.

The skim milk price will be calculated by subtracting from the Class III price the value determined by multiplying the butterfat differential by 35. The skim milk price will be expressed on a per hundredweight basis, rounded to the nearest full cent. Prices for butterfat, protein, and fluid carrier residual were defined previously within this decision.

Because producer location adjustments are not changed in this decision, the application of such adjustments to the producer price differential remains unchanged.

To enable the market administrator to compute the producer price differential, handlers will need to supply additional information on their monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers will be required to report pounds of protein and somatic cell information. This information will be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers, and receipts of bulk milk received by transfer or diversion.

Handlers purchasing milk from cooperative pool plants will have their obligations for Class I milk computed at the Class I differential price plus the pounds of skim milk in Class I at the skim milk price plus the pounds of butterfat at the butterfat price; for Class II and Class III–A milk at the Class II and Class III–A differential prices, respectively, plus the pounds of protein at the protein price adjusted for somatic cell count, plus the hundredweight of fluid carrier at the fluid carrier price, plus the pounds of butterfat at the butterfat price; and for Class III milk the protein pounds times the protein price adjusted for somatic cell count, plus the hundredweight of fluid carrier at the fluid carrier price, plus the pounds of butterfat at the butterfat price. Payment for 9(c) milk will be based on the producer price differential adjusted for location at the plant of receipt plus the value of protein adjusted for somatic cell count, fluid carrier, and butterfat contained in the milk.

Because producers will be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler will be required to supply the producer not only with the information currently supplied, but also with: (a) the pounds of butterfat, the pounds of protein, and the hundredweight of fluid carrier contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rate that is required for payment for each pricing factor and, if a different rate is paid, the effective rate also.

A handler's value of milk will be determined by combining: (a) the pounds of producer milk in Class I times the Class I differential price, (b) the pounds of producer milk in Class II times the Class II differential price, (c) the value of overage, (d) the value of inventory reclassification, (e) the value, at the Class I minus Class III price difference, of other source receipts and receipts from unregulated supply plants allocated to Class I, (f) the value of handler location adjustments, (g) Class III–A credits, (h) the pounds of skim milk in Class I times the skim milk price, (i) the pounds of protein in Class II and Class III times the protein price adjusted for the average somatic cell count of the handler's producer milk receipts, and (j) the hundredweight of fluid carrier in Class II and Class III times the fluid carrier price.

The pounds of protein in Class II and Class III will be determined by multiplying the percent protein in the skim milk of the total producer milk received by the handler times the pounds of skim milk allocated to Class II and Class III. The hundredweight of fluid carrier in Class II and Class III will be determined by subtracting from the pounds of skim milk allocated to Class II and Class III the pounds of protein in Class II and Class III.

Handlers' obligations to the producer settlement fund will be determined by subtracting from the handler's value of milk the following: (a) the total pounds of each handler's producer milk times the producer price differential adjusted for location, (b) the total pounds of protein contained in the producer milk times the protein price, plus or minus the net somatic cell adjustment of producer milk received by the handler, (c) the total hundredweight of fluid carrier contained in the producer milk times the fluid carrier price, and (d) the value of other source milk at the producer price differential with any applicable location adjustment at the plant from which the milk was shipped deducted from the handler's value of milk.

The amendments to order language accompanying this decision are based on the current language of the Southern Michigan order, which includes any changes to the orders made necessary by the two national amendatory proceedings (Class II pricing and the M–W replacement) that were completed in March and April 1995.

NCI's exception requested that sufficient time be allowed following issuance of the final decision to implement the MCP plan. Although a similar request in the five midwest markets multiple component proceeding was responded to favorably, that request was made by a number of producer groups and handlers in those marketing areas. There were no Southern Michigan handlers or producer groups who indicated any need for a delay in the

implementation of the provisions proposed in this decision. Therefore, such a delay is not warranted in this proceeding.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1040.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Southern Michigan marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

May 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Southern Michigan marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1040

Milk marketing orders.

Dated: August 11, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Milk in the Southern Michigan Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, of 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1040.85.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Southern Michigan marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the revised recommended decision issued by the Administrator, Agricultural Marketing Service, on December 2, 1994, and published in the **Federal Register** on December 14, 1994 (59 FR 64464), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, subject to the following modifications:

a. A change in the application of the market administrator's discretion to modify supply plant shipping percentages has been made to § 1040.7(b) by removing (6)(iii) and adding (7).

b. Changes in the treatment of the somatic cell adjustment require modification of reporting requirements in § 1040.30(a).

c. Additional changes due to the treatment of the somatic cell adjustment have been made by adding § 1040.50(l), deleting § 1040.64, and modifying § 1040.60(a)(5).

d. Changes for the purpose of more easily accommodating Class III–A provisions have been made by adding §§ 1040.50(g) and 1040.60(a)(3) and deleting § 1040.61(a)(3).

e. A change for the purpose of conforming with amendments resulting from the Class II pricing proceeding has been made in § 1040.53(b).

f. Changes for the purpose of conforming with amendments resulting from the M-W replacement proceeding have been made in § 1040.74.

g. Changes for the purpose of correcting or clarifying order language have been made in the introductory text and paragraph (k) (formerly (j)) of § 1040.50, § 1040.60(a)(6), § 1040.61(a)(4) and (5), § 1040.62(e), § 1040.63(a), (c), and (d), § 1040.71(a)(2)(ii) and (a)(2)(iv), § 1040.73(b)(1)(ii) and (c), and § 1040.75(a)(1).

Accordingly, this decision proposes 7 CFR Chapter X be amended as follows:

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 1040.7 is amended by adding paragraphs (b)(5)(iii) and (b)(7) to read as follows:

§ 1040.7 Pool Plant.

* * * * *

(b) * * *

(5) * * *

(iii) Partially regulated distributing plants that are neither other order plants, producer-handler plants, nor exempt plants and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

* * * * *

(7) The shipping percentages determined pursuant to paragraphs (b)(1) or (b)(6) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping requirements might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired to be effective.

* * * * *

3. Section 1040.30 is amended by revising paragraphs (a) and (c), and removing paragraph (d), to read as follows:

§ 1040.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1040.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler, and

(ii) Receipts of milk from handlers described in § 1040.9(c).

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products;

(ii) Receipts of fluid milk products not included in (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1040.40(b)(1).

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

4. Section 1040.31 is amended by revising paragraph (a) to read as follows:

§ 1040.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1040.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) The producer's name and address;

(2) The total pounds of milk received from such producer, with its protein and butterfat percentage;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The somatic cell count of the producer's milk;

(6) The amount, or the rate per hundredweight, or rate per pound of component, the somatic cell adjustment to the protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

5. Section 1040.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1040.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

6. Section 1040.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l), to read as follows:

§ 1040.50 Class and component prices.

Subject to the provisions of § 1040.52, the class prices per hundredweight of milk containing 3.5 percent butterfat

and the component prices per hundredweight or per pound for the month shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

(e) Class I differential price. The Class I differential price shall be the difference between the current month's Class I and Class III price (this price may be negative).

(f) Class II differential price. The Class II differential price shall be the difference between the current month's Class II and Class III price (this price may be negative).

(g) Class III–A differential price. The Class III–A differential price shall be the difference between the current month's Class III–A and Class III price (this price may be negative).

(h) Skim milk price. The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) Fluid carrier price. The fluid carrier price per hundredweight, rounded to the nearest whole cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price (this price may be negative).

(l) Somatic cell adjustment. For each producer, an adjustment to the protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the following table by the simple average price for the month of 40-pound blocks of Cheddar cheese at the National Cheese Exchange as reported by the Department. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

Somatic cell counts	Constants for computing the somatic cell adjustment
1 to 50,000	.078125
51,000 to 100,000	.062500
101,000 to 150,000	.046875
151,000 to 200,000	.031250
201,000 to 250,000	.015625
251,000 to 300,000	.0078125
301,000 to 350,000	.000000
351,000 to 400,000	.000000
401,000 to 450,000	−.0078125
451,000 to 500,000	−.015625
501,000 to 550,000	−.0234375
551,000 to 600,000	−.031250
601,000 to 650,000	−.0390625
651,000 to 700,000	−.046875
701,000 to 750,000	−.062500
751,000 and above	−.078125

7. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices and any other price information deemed appropriate:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The fluid carrier price for the preceding month;

(i) The butterfat differential for the preceding month;

8. The section heading in § 1040.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1040.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1040.9(b) and (c), as follows:

(a) Calculate the following values:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1040.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1040.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III–A by the Class III–A differential price for the month;

(4) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1040.44(a) by the skim milk price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1040.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price for the month computed pursuant to § 1040.50(j) and adjusted pursuant to § 1040.50(l) for the weighted average somatic cell content of the handler's receipts of milk; and

(6) Add a fluid carrier value calculated as follows: Subtract from the pounds of skim milk allocated to Class II and Class III pursuant to § 1040.44(a) the protein pounds contained therein, determined by multiplying the pounds of skim milk in Class II and Class III by the average protein content of producer skim milk received by the handler; then multiply the resulting pounds (in hundredweight) of fluid carrier by the fluid carrier price.

* * * * *

(f) Add an amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1040.43(e) and § 1040.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1040.44(a)(11) and the corresponding steps of § 1040.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

9. Section 1040.61, including the section heading, is revised to read as follows:

§ 1040.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1040.60(a)(1), (a)(2), (a)(3) and (b) through (i) for all handlers who made reports pursuant to § 1040.30 for the month and who made payments pursuant to § 1040.71 for the preceding month;

(2) Add the values computed pursuant to § 1040.60(a)(4), (a)(5), and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total hundredweight of fluid carrier contained in such milk by their respective prices;

(3) Add an amount equal to the total value of the applicable location adjustments computed pursuant to § 1040.75(a)(1); and

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund.

(b) Divide the aggregate value computed pursuant to paragraph (a) of this section by the sum of the following:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1040.60(f).

(c) Subtract not less than 6 cents nor more than 7 cents per hundredweight. The result shall be the ''producer price differential.''

10. Section 1040.62 is revised to read as follows:

§ 1040.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The fluid carrier price;

(d) The butterfat price;

(e) The average butterfat content and protein content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

11. A new section 1040.63 is added under the undesignated centerheading ''Producer Price Differential'' to read as follows:

Producer Price Differential

§ 1040.63 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The producer price differential computed pursuant to § 1040.61 and adjusted for location pursuant to § 1040.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The butterfat price computed pursuant to § 1040.50(i), multiplied by the total pounds of butterfat contained in the producer milk received from the producer;

(c) The protein price computed pursuant to § 1040.50(j), adjusted for somatic cell count pursuant to § 1040.50(l), multiplied by the total pounds of protein contained in the producer milk received from the producer; and

(d) The fluid carrier price computed pursuant to § 1040.50(k), multiplied by the total hundredweight of fluid carrier contained in the producer milk received from the producer.

12. Section 1040.71 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1040.71 Payments to the producer-settlement fund.

(a) * * *

(1) The total value of milk of the handler for such month as determined pursuant to § 1040.60.

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1040.44(c) by the producer price differential, excluding any applicable location adjustment pursuant to § 1040.75(a)(3);

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price adjusted pursuant to § 1040.50(l) for the weighted average somatic cell content of the handler's receipts of milk;

(iii) An amount obtained by multiplying the total hundredweight of fluid carrier contained in producer milk by the fluid carrier price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1040.60(f) by the producer price differential.

* * * * *

13. Section 1040.73 is amended by revising the first sentence of paragraph (a), paragraph (b)(1)(ii), and paragraph (c), to read as follows:

§ 1040.73 Payments to producers and to cooperative associations.

(a) Except as provided by paragraph (b) of this section, on or before the 15th day of each month, each handler (except a cooperative association) shall pay each producer for milk received from the producer during the preceding month not less than the value determined pursuant to § 1040.63 adjusted by the location differential pursuant to § 1040.75, less the payment made pursuant to paragraph (d) of this section. * * *

(b) * * *

(1) * * *

(ii) The total pounds of butterfat, total pounds of protein, and total pounds of fluid carrier contained in the producer's milk, and the average somatic cell count of the producer's milk;

* * * * *

(c) On or before the 13th day after the end of each month, each handler shall pay a cooperative association which is a handler with respect to milk received by the handler from a pool plant operated by such cooperative association, or by bulk tank delivery pursuant to § 1040.9(c), not less than an amount computed pursuant to § 1040.63.

* * * * *

14. Section 1040.74 is revised to read as follows:

§ 1040.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1040.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

15. Section 1040.75 is amended by revising paragraphs (a)(1) and (c), to read as follows:

§ 1040.75 Plant location adjustments for producers and on nonpool milk.

(a) * * *

(1) May deduct from the producer price differential the rate per hundredweight applicable pursuant to § 1040.52(a)(1) or (2) for the location of the plant at which the milk was first physically received.

* * * * *

(c) For purposes of computation pursuant to §§ 1040.71 and 1040.72, the statistical uniform price shall be

adjusted at the rates set forth in § 1040.52 applicable at the location of the nonpool plant from which the other source milk was received except that the statistical uniform price, so adjusted, shall not be less than the Class III price.

16. Section 1040.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii), to read as follows:

§ 1040.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds 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 partially regulated distributing plant (but not to be less than the Class III price); and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1040.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

§ 1040.85 [Amended]

17. In Section 1040.85 the introductory text is amended by removing the words ''2 cents'' and adding in their place the words ''4 cents''.

§ 1040.86 [Amended]

18. In Section 1040.86 paragraph (a) is amended by removing the words ''5 cents'' and adding in their place the words ''7 cents''.

Note: This marketing agreement will not appear in the Code of Federal Regulations.

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1040.1 to 1040.86, all inclusive, of the order regulating the handling of milk in the Southern Michigan marketing area (7 CFR PART 1040) which is annexed hereto; and

II. The following provisions: § 1040.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of May 1995, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1040.88 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 95–20347 Filed 8–17–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–56–AD]

Airworthiness Directives; Cessna Model 441, 500, 550, and 560 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Model 441, 500, 550, and 560 series airplanes. This proposal would require replacement of outflow/safety valves with serviceable valves. This proposal is prompted by a report of cracking and subsequent failure of outflow safety valves in the pressurization system. The actions specified by the proposed AD are intended to prevent such cracking and subsequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane.

DATES: Comments must be received by October 16, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Allied Signal, Inc., Controls and Accessories, 1110 North Oracle Road, Tucson, Arizona 85737–9588. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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