Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, and 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Notice of Extension of Time for Filing Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing comments to the tentative partial decision.

7 CFR Part	Marketing Area	AO Nos.
1005	Carolina	AO–388–A9
1007	Southeast	AO–366–A38
1011	Tennessee Valley	AO–251–A40
1046	Louisville-Lexington-Evansville.	AO–123–A67

SUMMARY: This document extends the time for filing comments to the tentative partial decision which would incorporate a transportation credit balancing fund into four Federal milk marketing orders in the Southern United States. The amendments are based on the record of a public hearing held May 15–16, 1996, in Charlotte, North Carolina. Carolina Virginia Milk Producers Association requested additional time to more accurately comment on the amendments. The time has been extended sixty (60) days to October 16, 1996.

DATES: Comments are now due on or before October 16, 1996.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Partial Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Rules: Issued August 2, 1996; published August 9, 1996.

Notice is hereby given that the time for filing comments to the tentative partial decision regulating the handling of milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas is hereby extended from August 17, 1996, to October 16, 1996.

Carolina Virginia Milk Producers Association requested the extension of time for comments arguing that an extension was necessary in order to have sufficient time to observe the rules once in effect. This additional time would allow interested persons to comment more accurately on the amendments.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

Dated: August 16, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–21489 Filed 8–22–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1124

[Docket Nos. AO–368–A25, AO–380–A15; DA–95–01]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments To Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document recommends adoption of proposed amendments that would add two counties to the Pacific Northwest milk marketing area and modify the component pricing provisions of the order. Other issues included in the proceeding, including all of those pertaining to the Southwestern Idaho-Eastern Oregon Federal milk order, will be dealt with at a later time. The recommendations are based on the record of a public hearing held in Portland, Oregon, on July 11–12, 1995.

DATES: Comments must be submitted on or before September 23, 1996.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

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 amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act 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.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The record indicates that there are approximately 1,400 dairy farmers whose milk is pooled under the Pacific Northwest Federal milk order, and 20 milk handlers regulated under the order. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered to be small businesses.

None of the proposed amendments would result in any change in the regulatory status of any handlers or the pool status of any producers. The addition of two counties to the marketing area would reduce the handler burden of reporting out-of-area sales into the counties added to the marketing area.

The addition of a payment component is not expected to cause any additional expense to milk handlers for testing producer milk. Reporting an additional component may increase the time involved in preparing handler and producer payroll reports to a small degree, particularly in the process of changing from two payment components to three. However, there was no testimony regarding any additional time required for the preparation of these already-required reports.

The record of the proceeding indicates that the proposed change in the multiple component pricing plan will result in a reduction of the minimum prices handlers are required to pay producers by about 10 cents per hundredweight, or less than one percent of the pool value of producer milk. This change may confer a slight benefit on handlers of milk used in manufactured dairy products, and reduce returns to some dairy farmers. However, a reduction in the cost of milk used in cheese may result in more milk being used in cheese rather than nonfat dry milk, which generally is a lower-valued use. In that case dairy farmers may benefit from higher returns to the pool. In any event, Federal milk order prices are minimum prices, and handlers can always choose to pay more than order prices to producers.

Only one participant in the proceeding identified his operation as a small business, but did not identify the manner in which the proposed amendments would affect it specifically as a small business. Further comments are invited concerning the potential benefits or costs of the proposed amendments on small entities.

Prior Documents in This Proceeding

Notice of Hearing: Issued June 15, 1995; published June 21, 1995 (60 FR 32282).

Extension of Time for Filing Briefs: Issued October 12, 1995; published October 23, 1995 (60 FR 54315).

Extension of Time for Filing Briefs: Issued November 2, 1995; published November 9, 1995 (60 FR 56538).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Portland, Oregon, on July 11–12, 1995, pursuant to a notice of hearing issued June 15, 1995, (60 FR 32282).

The material issues on the record of hearing relate to:

1. Pacific Northwest marketing area.
2. Supply plant definition.
A. Southwestern Idaho-Eastern Oregon.
B. Pacific Northwest.
3. Government agency plant.
4. Producer milk diversion limits.
A. Southwestern Idaho-Eastern Oregon.
B. Pacific Northwest.
5. Call provision.
6. Pacific Northwest multiple component pricing provisions.

This decision deals only with issues 1 and 6. The remaining issues on which testimony and data were gathered at the hearing will be considered and dealt with in the process of restructuring the Federal milk orders pursuant to the 1996 Farm Bill.

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. *Pacific Northwest marketing area.* A proposal to add the only remaining two counties on the Olympic Peninsula that currently are not part of the marketing area to the Pacific Northwest marketing area should be adopted. Darigold Farms, a cooperative association that is also a large handler under the Pacific Northwest order, testified that the necessity of separating out sales to Clallam and Jefferson Counties, Washington, for the purpose of reporting out-of-area sales is difficult and time-consuming, but of little real benefit. The record indicates that there are no handlers having sales within these two counties who would become regulated by the addition of the counties to the marketing area. In addition, inclusion of the two counties would reduce the reporting requirements for currently-regulated handlers, who must report sales into unregulated area separately so that the proportion of their sales within the marketing area can be used for determining pool qualification. Therefore, the proposal to add Clallam and Jefferson counties to the Pacific Northwest marketing area should be adopted.

6. *Modification of multiple component pricing.* A revised multiple component pricing (MCP) plan should be adopted in the Pacific Northwest Federal milk marketing order. The pricing plan would contain elements of both the multiple component pricing plan initially submitted by Darigold Farms in Proposal 2, and that proposed by National All-Jersey, Inc., in Proposal 4. Producers would be paid on the basis of three components in milk: butterfat, protein, and other nonfat nonprotein solids (other solids). Producers' share of the value of the pool's Class I and Class II uses would be reflected in a separate weighted average differential price, or ''producer price differential.''

Regulated handlers would pay for the milk they receive on the basis of total butterfat, the protein and other nonfat solids used in Classes II and III, skim milk used in Class I, and the hundredweight of total product used in Class I, II and III–A.

At the present time, milk received by handlers pooled under the Pacific Northwest order is priced on the basis of the pounds of total butterfat, nonfat milk solids used in Classes II and III and the hundredweight of skim milk used in Class I, and the hundredweight of total product used in Classes I, II and III–A. 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 distributed to producers on the basis of the total pounds of nonfat milk solids and butterfat in each producer's milk, and each producer's per hundredweight share of the pool's Class I, Class II and Class III–A uses.

Darigold Farms, the proponent cooperative of Proposal 2, proposed to change the pricing of milk in the Pacific Northwest Federal milk order from the current two-component pricing plan based on butterfat and solids-not-fat (SNF) to a three-component plan based on butterfat, protein, and ''other solids'' (solids other than butterfat and protein). The Darigold witness testified that the protein and butterfat prices would be computed on the basis of cheese and butter prices, respectively, and the yields of these respective products in the manufacturing process. The ''other solids'' price to handlers would be computed by subtracting the value of the protein and butterfat in a hundredweight of milk from the basic formula price, and dividing by the Pacific Northwest market average ''other solids'' content. Currently, the nonfat solids price is computed by subtracting the value of the butterfat in a hundredweight of milk from the basic formula price and dividing by the average nonfat solids content of the milk to which the basic formula price applies—Grade B milk received at manufacturing plants in the States of Minnesota and Wisconsin.

Class I milk would continue to be paid for on a butterfat-skim basis. No somatic cell adjustment would be included in Pacific Northwest multiple component pricing. Rather than retaining the ''weighted average differential price'' to producers, a hundredweight price that represents the value to producers of participation in the marketwide pool, the Darigold proposal would include class price differential values in the producer ''other solids'' price calculation.

The proponent witness reviewed the evolution of pricing milk under various MCP plans, and refinements made since the first MCP plan was implemented in the Great Basin Federal order (Order 139) in 1988. The witness focused on MCP plans which specifically priced the protein portion of the skim milk, and noted that the plan first introduced in three Ohio and Indiana Federal milk orders in 1993 used protein pricing based on the Minnesota-Wisconsin price survey (M-W) average protein test rather than on the market average protein test. He stated that Darigold supported this pricing refinement (use of the average test of M-W milk instead of the market average test) at the first proceeding in which MCP was considered for the Pacific Northwest order, but neither understood its implications nor had detailed information regarding application of that concept to a plan pricing the SNF portion of skim milk instead of the protein portion.

Prior to mid-1994, the Pacific Northwest milk order (Order 124) priced milk on the basis of volume and butterfat. In May 1994, Order 124 adopted a MCP plan which priced the solids-not-fat (SNF) portion of the skim milk as well as the butterfat component. Proponent's witness stated that this pricing system recognized that much of the milk pooled under the order is dried into milk powder, and that yields on powder correlate with the SNF content of the milk.

The Darigold witness observed that average Grade B milk in M-W plants typically tests lower for SNF content than does average Grade A milk in the Pacific Northwest, and that fewer M-W plants report SNF than report protein content. The witness stated that this difference in test does not apply to protein, as protein content in milk is comparable across regions or orders. He asserted that the higher average SNF test of milk in Order 124 than in the M-W plants resulted in over five million dollars in additional costs incurred by Darigold during the first 12 months of the current MCP plan.

The Darigold witness asserted that the current MCP system has resulted in Order 124 handlers paying the highest regulated price in the U.S. for milk used to make cheese. As a result of this noncompetitive position, he stated, an increase in the northwest's share of the national cheese market is not possible. The witness also claimed that cheese market prices have decreased due to competition. He added that while under current pricing Darigold cannot forecast profitability in making bulk cheese, consumer-sized units of cheese would be profitable.

The witness stated that Darigold would like to encourage cheese production in the region. He noted that the cooperative has converted a nonfat dry milk plant to cheese-making capability to, in part, meet increasing demand for cheese and lessen the impact of Class III–A pricing (which reflects a lower value of nonfat dry milk, compared to cheese) on producers. The witness testified that a consultant analyzed the economic feasibility of the proponent increasing cheese production, thereby decreasing production of nonfat dry milk, and concluded that a new cheese plant may not be profitable because of Order 124's current MCP plan. The witness stated that conversion of another Darigold plant to mozzarella production has been delayed because of the consultant's analysis.

The Darigold witness asserted that national cheese companies approached about investing in the Pacific Northwest region have no interest because the price of milk is too high and the region is too far from the processing centers generally located east of the Mississippi. He explained that a competitive price for Class III milk (primarily milk used in cheese) is essential to both maintain current levels of cheese production and encourage new investments in cheese plants.

The proponent witness asserted that adoption of Darigold's proposal would bring the cooperative association back to a ''similar disadvantage'' as that held before May 1994. He explained that the proposal is structured to reduce the cost of milk to a level that approaches what was paid before MCP, although it still would be slightly higher.

Proponent's post-hearing brief stated that the price of milk paid by cheese plants on the basis of components under Order 124 must be reduced to something close to the Order 135

(Southwestern Idaho-Eastern Oregon) price if parity is to exist among cheese plants and if Order 124 cheese plants are to be able to compete with the Idaho plants.

The Darigold witness said that the impact of the current MCP system also is felt by plants producing Class II and III–A products. Witness asserted that two of Darigold's true powder plants have become unprofitable since the implementation of MCP, impairing cash flow and reducing the cooperative's ability to fund capital investments without per-unit retains.

Proponent's witness estimated that under Proposal 2, producer income would fall by about eight cents per hundredweight (cwt.) if Class III utilization remains constant, but would be two cents per cwt. higher than producers were paid prior to the current MCP system. He stated that a lower Class III price should result in an increase of Class III utilization (with a corresponding reduction in the volume of Class III–A utilization), which would increase the blend price to producers because milk would be used in cheese—a more valuable form than nonfat dry milk. As a result, he claimed, producer income would increase.

The Darigold witness asserted that the current MCP plan in Order 124 increased producer returns by an average of 10 cents per cwt. from the previous system but failed to give producers proper signals about the components needed in the market. Because the weighted average differential is included in the current pricing system, he claimed, producers continue to produce for volume to enhance returns. The witness argued that elimination of the producer weighted average differential as a separate price component that represents producers' share of the Class I, II and III–A differences in value from the basic formula price would also eliminate a source of confusion when the differential is a negative value. He stated that payments based only on pounds of components would show producers more directly the value of the individual components, giving the producer a direct incentive to produce the most valuable component.

The witness testified that a somatic cell adjustment was not included in proponent's proposal because Order 124's monthly average SCC is between 190,000 and 210,000. Consequently, he stated, somatic cells do not need to be considered as a pricing factor in Order 124.

Opposition to Proposal 2 was expressed by five Order 124 producers, all members of the proponent cooperative. Each producer asserted that the proposal would result in lower prices to producers and each producer expressed support for the pricing system currently in effect in Order 124.

National All-Jersey, Inc. (NAJ), a national dairy farmer organization that assists its members in marketing their milk, is proponent of Proposal 4, a MCP plan which would modify the current plan in effect under Order 124. Also supporting Proposal 4 is the American Jersey Cattle Association. The two organizations have 220 dairy farmer members in Oregon and Washington.

NAJ's witness expressed support for the concept presented in Proposal 2 but stated that Proposal 4 differs in two respects: the method of calculating the protein value and retention of the current feature of a weighted average differential paid on a hundredweight basis.

The NAJ witness stated that the current system is an improvement over the butterfat/skim (pre-May 1994) plan. However, he asserted, market conditions are changing, with more milk in this marketing area predicted to be used in cheese production. He stated that since protein is the most important milk component in cheese manufacture, it is important to recognize protein in the Order 124 pricing plan.

The witness stated that under the current plan, all nonfat solids components are priced at the same level—a pound of protein is assigned the same value as a pound of lactose. According to the witness, the current pricing plan does not give dairy farmers a direct incentive to increase production of protein compared to the other nonfat solids. He asserted that the current plan can be inequitable to both producers and handlers because protein should be assigned a higher value than lactose.

The witness testified that a producer with milk containing a higher percentage of nonfat solids as protein is paid less per pound of protein than one with a lower percentage of nonfat solids that is protein. The NAJ representative stated that based on the relationship of protein to solids-not-fat in a particular milk, a cheese maker could either be overpaying or underpaying for the milk. He contended that a milk pricing plan that includes a separate payment for the protein component would be more equitable to both producers and handlers. He also noted that a MCP plan that includes protein would allow cheese manufacturers to purchase milk at a price that better reflects its cheese yield potential.

NAJ's witness stated that the major objective of any milk pricing plan is to give dairy farmers the economic incentive to produce the most valuable component in milk, which currently is protein. He contended that to achieve this objective, the protein value needs to be as high as can be economically justified while being equitable to both producers and handlers. The witness asserted that within any MCP plan that is adopted, the ratio of the protein price to both the butterfat price and the other solids price must be high enough to encourage dairy farmers to increase the ratio of protein to butterfat and other solids in their milk production.

Proposal 4's protein price would be derived from cheese and whey powder market prices and yield factors. The proponent witness stated that both protein and butterfat are necessary for making cheese. He explained that in addition to protein's direct impact on yield, a higher level of the casein portion of protein allows more butterfat to be utilized in cheese-making, giving protein a value as a cheese ingredient beyond its actual contribution to yield.

The NAJ witness contended that evidence exists to support a higher value for protein than provided for in Proposal 2. He stated that many cheese manufacturers add nonfat dry milk (NFDM) to producer milk to standardize or increase the ratio of casein or protein to butterfat; in doing so, the protein content of the milk used to make cheese is increased and therefore more of the butterfat contained in producer milk may be utilized. The witness stated that a higher protein value would give dairy farmers a greater economic incentive to produce protein rather than the less important component, ''other solids.''

The NAJ witness explained that Proposal 4's protein price also includes a value determined from the whey price and a yield factor, both to recognize the additional value of protein beyond that calculated from the yield factor and a market cheese price and to account for all of the milk protein. The witness asserted that the majority of cheese plants do process their whey.

The proponent witness asserted that the inclusion of whey in the calculation of the Proposal 4 protein price is consistent with current market practices. As an example, the witness cited the price of butter used to determine the price of butterfat in the Federal order system. He pointed out that the butterfat price, calculated from the price of butter, is paid by handlers that process or manufacture milk products other than butter. The NAJ witness stated that handlers who do not manufacture butter have not objected to paying for butterfat based on the price of a product they do not make, and argued that this is no different than the

price of protein being based on the price of Cheddar cheese and dry whey solids for handlers that do not manufacture these products.

According to the NAJ witness, the Proposal 4 ''other solids'' price would be calculated in a manner similar to that in Proposal 2, and the market average content for other solids would be used. Proposal 4 retains the current weighted average differential price on a hundredweight basis rather than including the Class I, II, and III–A differential values in the computation of the producer ''other solids'' price as in Proposal 2. The witness contended that it is important for producers to see the direct value of participation in the Federal order pool and the sources of value for each milk component.

The NAJ representative stated that Proposal 4 also uses the same protein and other solids prices for both producers and handlers, with any differences in component levels of milk used in Class I versus Classes II and III to be reconciled in the weighted average differential value. The witness stated that the need for separate handler and producer protein and other solids prices and the confusion resulting from use of more than one price for a single component would be eliminated.

The NAJ witness said that since there is a direct relationship between manufacturing product yield and the level of protein and other solids contained in milk, Class II and III handlers' obligations to the pool under Proposal 4 would reflect more accurately the economic value of the milk they use. He stated that a MCP plan that provides equal manufacturing margins across all milk component levels would be the most uniform and equitable. He asserted that Proposal 4 comes closest to meeting this objective by providing more equity among handlers while providing an incentive to procure and produce higher-protein milk. The witness contended that adoption of Proposal 4 would direct milk to its most valuable use.

The proponent witness said Proposal 4 would allow all producers to receive payment at the same price per pound for each component contained in their milk production, regardless of concentration. The witness stated that more equity in payment to producers would be provided than under either the current system or Proposal 2 and, consequently, that some redistribution of monies among producers would occur.

A witness for Tillamook County Creamery Association (Tillamook), a cooperative which pools and processes one-third of the milk produced in Oregon, testified in opposition to Proposals 2 and 4. Tillamook's primary objections and concerns, supported by Portland Independent Milk Producers Association (PIMPA) in a post-hearing brief filed with Tillamook's, are that the proposed changes are not economically justified, the proposals would result in lower pay prices to Pacific Northwest dairy farmers, and the proposals should not have been heard given another recent proceeding held in 1992 regarding many of the same issues.

The Tillamook witness stated that the cooperative has recently had a less-than-adequate supply of raw milk to meet production needs as a result of declining milk production within its membership brought on by severe economic stress in the Oregon coastal dairy industry. Tillamook's post-hearing brief contended that current supply and demand conditions in Order 124 cannot support a price reduction and, consequently, no justification exists for the lower pay prices that may result if Proposal 2 is adopted.

The Tillamook representative stated that since the implementation of Class III–A in Federal orders in 1993, Tillamook member incomes have fallen 64 cents per hundredweight, while feed costs continue to rise. The witness stated that adoption of Proposal 2 would cause pool blend prices and producer payout prices to fall another 8 to 9 cents per hundredweight. He stated opposition toward any proposals that would further erode producer income.

The Tillamook witness predicted that a reduction in producer pay prices would result in additional plant profits for manufacturers of cheese. Given the influence of NFDM manufacture and Class III–A prices on pool values, however, he expected little if any of that increase in plant margins to be passed back to producers. The witness stated that manufacturing plants should look toward production efficiencies and value-added marketing rather than reduced payments to producers for their source of income.

The Tillamook witness stated a preference for the current pricing system. However, he conceded that adding protein as a component in pricing milk is a sound concept and stated that if a new form of MCP were adopted, Tillamook would support a system using the composition of M–W average milk to value all components. The witness argued that using a national standard to determine the value of components in milk is more appropriate than having a variety of isolated standards based on smaller production areas. Additionally, he asserted that using M–W component tests to calculate the value of each component would be the best method to assure that all processors are treated fairly and producers are paid properly for milk which produces greater cheese yields.

Tillamook's post-hearing brief noted that the 1992 hearing which initially considered MCP for Order 124 considered specifically the question of whether to use the M–W average test or the market average test to compute the SNF price; interested parties ultimately requested, and USDA adopted in the final decision, the average M–W test for solids nonfat.

The Tillamook representative agreed with other witnesses that the best hope for improving producer prices under the current provisions of Order 124 would be to increase the utilization of Class III relative to Class III–A. He also agreed that because an economically competitive price of milk must exist to produce cheese, milk used to produce cheese in the region should not be priced higher than in other regions of the Federal order system.

The Oregon-Washington Dairy Processors Association (OWDPA), representing proprietary processors who operate the majority of pool distributing plants regulated under Order 124, opposed Proposals 2 and 4 because both would result in lower-than-current milk prices to producers. A witness for the association asserted that producers associated with Order 124 have been subjected to excessive price declines in recent years and oppose any further declines, particularly those which result from increasing returns to specific sectors of the processing industry.

The OWDPA witness supported modifications to either Proposal 2 or 4 which would use M–W average component composition in place of market average composition. He stated that this modification for either proposal would limit potential producer losses by following the current MCP plan more closely, and would be consistent with MCP plans in other markets.

The witness stated OWDPA's opposition to incorporating Class I, II and III–A price differentials within the calculation of the other solids price, and supported instead continuing payment of a weighted average differential price to producers on a hundredweight basis. He asserted that Proposal 2 is an attempt to use differential funds to enhance returns on ''other solids'' and would represent an unfair advantage to producers of higher solids milk who may already be receiving additional payments to reflect the unique characteristics of their production for the market. The witness observed that the production of high-solids producers

may be the least likely source of milk for those uses which normally generate class price differentials. The OWDPA witness asserted that it is inappropriate to penalize producers serving the Class I market by denying them equal access to funds derived from such sources. He argued that returning Class I or Class II differentials to producers on a hundredweight basis is the only equitable method of apportioning pool proceeds.

Northwest Independent Milk Producers Association (NWI), a cooperative association regulated under Order 124, supported Proposal 4. The NWI witness expressed the cooperative's support for continued refinements in MCP programs under Federal orders with the position that the component values of producer milk should reflect more closely the market value of products produced by these components. He stated that since January 1995 the cooperative has paid its members based on the components and values of the MCP plan recommended in late 1994 for five Midwest Federal order markets.

The NWI witness stated that Proposal 2 would improve the current MCP system but would fail to price components used in Class III closely enough to the Class III value to result in appropriate returns to producers. The witness asserted that Proposal 4 would reflect more nearly the components' market value and convey more accurately to producers the right economic signals for component production and management decisions.

The NWI representative noted that producer confusion and misunderstanding has existed regarding the weighted average differential, which sometimes has been positive and sometimes negative. However, he maintained that the current order provisions result in a weighted average differential that appropriately indicates market prices and class usages, and that this aspect of the current pricing plan should be continued.

Olympia Cheese Company (Olympia Cheese) was not represented by testimony during the hearing, but did file a post-hearing brief. Olympia Cheese's brief contended that more time should be allowed to assess the current MCP plan and to allow for changes resulting from the pending Farm Bill. The brief opposed implementing the MCP portion of Proposal 2. However, should the MCP plan be revised, the brief supported using the Pacific Northwest market average test instead of the M–W test to compute component values, and opposed including a whey protein factor to calculate a protein price in any MCP plan. The brief contended that whey is more of a disposal problem than a profitable endeavor and that whole whey operations represent a disposal cost rather than a contribution to earnings. The brief stated that Olympia Cheese has invested capital and now makes whey protein concentrate, but stated that the resulting lactose is a disposal problem that will require another substantial investment.

This decision recommends the adoption of a pricing plan for milk based on three components rather than two, and a weighted average differential, or ''producer price differential'' per hundredweight. Milk pooled under the Pacific Northwest Federal milk order should be priced on the basis of its protein, other nonfat solids, and butterfat components.

The protein price contained in this decision is based on the value of protein in the manufacture of cheese, as determined by cheese market prices, and is not a residual of the basic formula price (BFP) minus butterfat value as is the case in the Southwest Idaho-Eastern Oregon (Order 135) MCP plan. The butterfat price would be based on the butter market, as it is in other multiple component pricing systems. ''Other nonfat solids'' will be priced as a residual of the BFP minus protein value and butterfat value, divided by a marketwide average ''other solids'' test. The butterfat, protein, and other nonfat solids prices would be expressed in dollars per pound carried to the fourth decimal place. In addition, payments to each producer should reflect the value of participation in the marketwide pool on a hundredweight basis.

Recognition of both the protein and other solids components under the Pacific Northwest pricing plan will give producers the proper signal to concentrate on production of nonfat solids, especially protein, because it is the solids in milk rather than the water that give milk its functional and economic value. Additional emphasis on the importance of the value of protein in cheese manufacture is appropriate, as this use of producer milk results in greater value to producers than milk used in nonfat dry milk, and the record indicates that an increasing percentage of the producer milk in this market will be used in cheese.

As in other orders for which multiple component pricing has been adopted, this decision assures that the value of the components of producer milk used in Class III remains equal to the BFP. Maintaining the price relationship of Class III use between orders helps to assure some basic uniformity in the Federal order pricing system nationally. If the sum of the butterfat and protein component values is greater than the BFP, a situation which would result in a negative other nonfat solids price, the protein price will be adjusted such that the other nonfat solids price will be zero.

Three details of the revised pricing plan on which participating parties did not generally agree surfaced at the hearing. These were (1) the computation of an appropriate level of protein price, (2) whether the ''other solids'' price should be computed by dividing the residual value by the M–W or the marketwide ''other solids'' test, and (3) whether the differential values of milk used in Classes I, II and III–A should continue to be paid to producers as a weighted average differential or be combined with the value from which the ''other solids'' price is computed.

Protein is the most important component in cheese-making and increasing volumes of milk in Order 124 are being used, or are forecast to be used, in cheese production. A payment for protein should be directly included in the milk pricing plan in order to give producers an incentive to increase protein production. Under the current butterfat and solids-not-fat pricing system, all nonfat solids are priced at the same level. As a result, producers are not given a direct incentive to increase protein production over other nonfat solids.

The inclusion of protein in the milk pricing system provides for greater equity for both handlers and producers. Under the current Order 124 pricing system, a producer who delivers milk containing a higher percentage of nonfat solids as protein receives a lower price per pound of protein than one with a lower percentage of nonfat solids that is protein. In this situation, some cheese-makers could be overpaying, and some underpaying, for milk, resulting in unequal milk protein costs to handlers. The three-component milk pricing plan provides a system in which manufacturing handlers are obligated to pay the same price per pound for each of the components in milk. At the same time, all producers would receive the same price per pound for each component contained in their milk.

Protein price. The protein price for milk pooled under the Pacific Northwest Federal milk order should be calculated by multiplying the monthly average of 40-pound block cheese prices on the Green Bay Cheese Exchange by 1.32, without including a value for whey protein. This price calculation, included in Proposal 2, would result in a lower protein price than that in

Proposal 4. The 1.32 yield factor is obtained from the modified Van Slyke and Price cheese yield formula. Based on milk containing 3.2 percent protein, the formula predicts that for each pound of protein used for Cheddar Cheese-making, 75 percent of that pound of protein yields 1.32 pounds of cheese (with the remaining 25 percent ending up in whey).

The record indicates that both protein and butterfat are necessary for cheese-making. Protein has value beyond its actual contribution to cheese yield because it determines the amount of the butterfat in milk that will be used in cheese by forming the matrix that causes the butterfat to remain with the cheese. The Van Slyke formula indicates that with a favorable ratio of protein to butterfat, 90 percent of each pound of butterfat used for Cheddar cheese-making remains in the cheese.

The total value of producer milk at market average component levels is basically the same under both Proposals 2 and 4; the difference is the percentage of the skim milk value allocated to protein and to other solids. When a value for whey is specifically included in the protein price calculation, as under Proposal 4 in which the value of protein in whey powder is included to account for all the milk protein beyond the portion contained in cheese, a higher protein price and lower other solids price result.

Proposal 4 provides a higher protein price than Proposal 2, but results in a protein price lower than that under Order 135. Comparing the period May 1994 through May 1995, the average protein prices per pound under Proposals 2 and 4, and under Order 135 would have been $1.6547, $2.0205, and $2.87, respectively.

The hearing record provides little basis for incorporating a whey powder price factor in the computation of the protein price. The record indicates that for one Order 124 handler the cost of whey production amounts to between 80 and 120 percent of the sales value. Although the protein in whey does have value, the cost of recovery is so great that it frequently has little, or a negative, value to handlers. In addition, certainly much less than 100 percent of the protein that is not incorporated in cheese is captured in whey products. The record also indicates that the capability of making a whey product, which is not available to every cheese-maker, leads to another disposal problem—that of lactose.

The NAJ argument that an appropriate protein component price would, like the price of butterfat based on a butter market price, reflect all of the value of the component's use in one product overlooks the fact that the price of butterfat, based on its value in butter, prices that component at probably its lowest use value, and likely underprices it in other products. Pricing protein according to its value in cheese appears to be appropriate, but enhancing that price by the value of a product that the handler may not make (whey) would overstate the value of protein in cheese. In addition, Federal order pricing is intended to reflect minimum values rather than maximum values. Handlers who believe that they obtain more value from protein than they are required to pay for under the order may gain a competitive advantage in procuring supplies of high-protein producer milk by paying more than the minimum order price for protein.

The difference in protein prices under Orders 124 and 135 should result in few, if any, disorderly conditions between the two marketing areas. On average, the amount by which the Order 135 protein price exceeds that in Order 124 will be compensated for by the additional ''other solids'' payment component under Order 124. Very few producers' milk should contain protein and ''other solids'' that vary so greatly from average milk that they would find it advantageous to overcome the various institutional factors that would make it difficult to switch between the two markets. If some degree of such ''switching'' should occur, it is even more unlikely that the balance between protein and ''other solids'' in individual producers' milk would be variable enough to make a change in markets more than a one-time occurrence.

Computation of ''other solids'' price. The price for ''other solids'' should be computed by dividing the remaining value of the BFP, after the butterfat and protein values have been deducted, by the Pacific Northwest ''other solids'' content. If the resulting other solids price is less than zero, the protein price would be reduced so that the ''other solids'' price would equal zero.

Record evidence indicates that the current pricing plan in the Pacific Northwest order does not value the composition of average milk correctly, and will continue to overvalue the ''other solids'' component if either Proposal 2 or 4 is adopted using the average nonfat solids test of M–W milk. The record indicates that while protein levels are comparable across regions or orders, the nonfat solids tests reported in the Pacific Northwest are consistently higher than those reported for M–W milk. The conclusion could be drawn that milk produced in the Pacific Northwest therefore should carry a higher value. However, because most plants within the M–W survey purchase milk for processing cheese, fewer plants within the survey report SNF than protein. Both the M–W survey price and the MCP system in the five north central markets reflect the fact that the M–W average test is used in markets that have a higher percentage of milk used to produce cheese.

Since the implementation of the Pacific Northwest MCP plan in May 1994, Grade B milk in the M–W region has tested lower for SNF by 0.14 pounds per hundredweight than has Grade A milk in the Pacific Northwest, resulting in a price difference between the two regions of .016 cents per pound of SNF. For a seven-month period during 1992, Darigold's SNF tests ranged from .04 to .19 higher than the M–W SNF tests. Thus, a discrepancy exists between the average SNF test stipulated in the order (the M–W test) and the average SNF test within the region. As a result, plants located in the Pacific Northwest pay more per hundredweight for milk used in manufactured products than do plants located in the M–W region. Additionally, Order 124's price per pound of SNF averages about 1 to 1.5 cents higher than California, placing class prices for milk used in manufactured products under Order 124 higher than both California and the Midwest. If the 5-market MCP decision were incorporated in the Pacific Northwest order, the cost of milk used in manufacturing would be higher under Order 124 than in either California or the Midwest. In such a case, it is appropriate to use market composition of milk for a region so distant from the upper Midwest.

Although use of the market, rather than the M–W, average of ''other solids'' to compute the ''other solids'' price will have the effect of reducing producer returns by approximately 10 cents per hundredweight, increased profitability of cheese manufacture should offset that effect by reducing the use of milk in Class III–A. If, as expected, increasing volumes of milk are used in cheese, rather than in (lower-value) nonfat dry milk, producer prices should increase accordingly.

Producer price differential. Although inclusion of the differential values of producer milk used in classes other than Class III was proposed to be part of the ''other solids'' price calculation, the weighted average differential should be calculated as it is currently. Some confusion between orders may be avoided by referring to it hereafter as the ''producer price differential,'' as it is in the 5 north central milk orders.

Apparently, one of the reasons for proposing that the differential pool values be incorporated in computation of the other solids price is to avoid producer confusion when the differential value is negative. The record shows that a negative differential existed for about 6 of the first 12 months under the current MCP system. While the negative value may be a difficult concept for producers to understand or accept—it indicates that participation in the marketwide pool has a negative value to them—there is value in making producers aware of this aspect of the Pacific Northwest pool.

Another of the reasons given for wanting to eliminate this remaining per hundredweight basis of paying producers for milk was to discourage producers from continuing to produce for volume, rather than solids, to enhance returns. It is difficult to describe the producer price differential as ''enhancing'' the hundredweight value of milk when it is sometimes negative. Inclusion of class price differentials in the ''other solids'' price would not necessarily enhance that price, but rather would add to it a random plus or minus factor of varying magnitude.

It is appropriate to continue a component of producer payments that represents the differential value of participating in the marketwide pool. Such a payment factor indicates market prices and the relative value of class usages.

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 Pacific Northwest and Southwestern Idaho-Eastern Oregon orders were first issued and when they were 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; and

(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) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Pacific Northwest marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR Part 1124 is proposed to be amended as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. The authority citation for 7 CFR Part 1124 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 1124.2, the list of Washington counties is revised to read as follows:

§ 1124.2 Pacific Northwest marketing area.

* * * * *

Washington counties:

Adams, Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman and Yakima.

* * * * *

3. In § 1124.30, paragraphs (a)(1)(i), (a)(1)(ii), (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;

* * * * *

(c) * * *

(1) The pounds of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) received from producers;

(2) The utilization of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) delivered to each pool plant pursuant to § 1124.9(c).

* * * * *

4. In § 1124.31, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat, protein and solids-not-fat other than protein (solids nonfat) contained in such milk, and the number of days on which milk was delivered by the producer during the month;

* * * * *

(b) * * *

(1) The total pounds of milk received from each producer and the pounds of

butterfat, protein and solids-not-fat other than protein (solids nonfat) contained in such milk;

* * * * *

5. In § 1124.50, paragraphs (f) introductory text and (g), are revised, and a new paragraph (h) is added to read as follows:

§ 1124.50 Class and component prices.

* * * * *

(f) The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the total of:

* * * * *

(g) 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.

(h) The other solids price per pound, rounded to the nearest one-hundredth 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, and dividing the resulting amount by the average other solids test of producer milk pooled under Part 1124 for the month, as determined by the Market Administrator. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

6. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class and component prices.

On or before the 5th day of each month, the market administrator shall announce publicly the following prices:

(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 other solids price for the preceding month; and

(i) The butterfat differential for the preceding month.

7. Section 1124.60 is amended by redesignating paragraphs (f) through (m) as paragraphs (g) through (n); revising paragraph (e), newly designated paragraphs (g) introductory text, (g)(3), (h)(3), and (h)(6), the section heading and the undesignated center heading preceding it; removing the phrase ''assigned to shrinkage'' in paragraph (h) and adding in its place the phrase ''assigned to inventory''; and adding a new paragraph (f) to read as follows:

Producer Price Differential

§ 1124.60 Handler's value of milk.

* * * * *

(e) Multiply the protein price for the month by the pounds of protein associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of protein shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) Multiply the other solids price for the month by the pounds of other solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of other solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of other solids in the handler's receipts of producer skim milk during the month for each report filed separately;

(g) With respect to skim milk and butterfat overages assigned pursuant to § 1124.44(a)(15), (b) and paragraph (g)(6) of this section:

* * * * *

(3) Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;

* * * * *

(h) * * *

(3) Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;

* * * * *

(6) Subtract the Class III value of the milk at the previous month's protein, other milk solids, and butterfat prices;

* * * * *

8. In § 1124.61, the section heading, introductory text, and paragraphs (a), (d) and (e) are revised to read as follows:

§ 1124.61 Producer price differential.

A producer price differential per hundredweight of milk for each month shall be computed by the market administrator as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1124.60(a) through (c) and (g) through (n) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month; and

(2) Add the values computed pursuant to § 1124.60(d), (e) and (f); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices;

* * * * *

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to § 1124.60(k); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the producer price differential.

9. Section 1124.62 is removed, and § 1124.63 is redesignated as § 1124.62 and revised to read as follows:

§ 1124.62 Announcement of the producer price differential and a statistical uniform price.

On or before the 14th 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 other solids price;

(d) The butterfat price;

(e) The average protein and other solids 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.

10. In § 1124.71 paragraph (b)(1), the phrase ''§ 1124.73(a)(2)(i), (ii), and (iii);'' is removed and the phrase ''§ 1124.73(a)(2)(ii) through (iv);'' is added in its place, and paragraphs (a)(1) and (b)(3) are revised to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(a) * * *

(1) The total handler's value of milk for such month as determined pursuant to § 1124.60; and

* * * * *

(b) * * *

(3) The value at the producer price differential adjusted for the location of the plant(s) from which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which

a value was computed or such handler pursuant to § 1124.60(k).

* * * * *

11. In § 1124.73, paragraphs (c)(2) and (d)(2) are amended by removing the phrase ''paragraph (a)(2)(i) through (iii) of this section'' and adding in its place the phrase ''paragraph (a)(2)(i) through (iv) of this section''; paragraphs (a)(2)(ii) through (vi), (c) introductory text, (c)(1), and (f)(2) are revised; and a new paragraph (a)(2)(vii) is added to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Add the amount that results from multiplying the protein price for the month by the total pounds of protein in the milk received from the producer;

(iii) Add the amount that results from multiplying the other solids price for the month by the total pounds of other solids in the milk received from the producer;

(iv) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the producer price differential for the month as adjusted pursuant to § 1124.74(a);

(v) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(vi) Subtract proper deductions authorized in writing by the producer; and

(vii) Subtract any deduction required pursuant to § 1124.86 or by statute; and

* * * * *

(c) Each handler shall pay to each cooperative association which operates a pool plant, or to the cooperative's duly authorized agent, for butterfat, protein and other solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat, protein, and other milk solids received during the first 15 days of the month at not less than the butterfat, protein, and other milk solids prices, respectively, for the preceding month; and

* * * * *

(f) * * *

(2) The total pounds of milk delivered by the producer, the pounds of butterfat, protein and other solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

* * * * *

§ 1124.74 [Amended]

12. In § 1124.74 paragraph (c), the phrase ''weighted average differential price'' is removed and the phrase ''producer price differential'' is added in its place everywhere it appears.

§ 1124.75 [Amended]

13. In § 1124.75, the second sentence of paragraph (a)(1)(i) is amended by adding the phrase ''or statistical uniform price'' after the words ''estimated uniform price'' and the phrase ''estimated uniform price'' in the first sentence of paragraph (b)(4) is removed and the phrase ''statistical uniform price'' is added in its place.

§ 1124.85 [Amended]

14. In § 1124.85 paragraph (b), the phrase ''§ 1124.60 (h) and (j)'' is removed and the phrase ''§ 1124.60 (i) and (k)'' is added in its place.

Dated: August 19, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–21491 Filed 8–22–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 101

[Docket No. 93–152–1]

RIN 0579–AA65

Viruses, Serums, Toxins, and Analogous Products; Definition of Biological Products and Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by revising the definition of ''biological products.'' The amendment is necessary in order to reflect current usage and advances in scientific knowledge, and to clarify certain parts of the definition.

We are also proposing to add a definition of ''guidelines'' to the regulations. Guidelines are used to assist manufacturers of veterinary biologics and other interested persons regarding test procedures, methods, and other considerations that would be acceptable to the agency in support of licensure of a veterinary biological product. This action would clarify in the regulations the purpose and intent of guidelines.

DATES: Consideration will be given only to comments received on or before October 22, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–152–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–152–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

Veterinary biological products are licensed under the Virus-Serum-Toxin Act (hereinafter referred to as the VSTA) on the basis of their purity, safety, potency, and efficacy. Any ''virus, serum, toxin, or analogous product'' intended for use in the treatment of animals is subject to regulation under the VSTA. Such substances are commonly referred to as biologics or biological products. The definitions of terms related to veterinary biological products appear in 9 CFR 101.

The Food and Drug Administration (FDA) regulates drugs for use in animals. The Federal Food, Drug, and Cosmetic Act (FFDCA) defines ''drugs'' to include, among other things, articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in man or other animals; and articles (other than food) intended to affect the structure or any function of the body of man or other animals. Articles that are used to improve animal performance, such as increased rate of gain and enhanced feed efficiency, are ''drugs'' under the FFDCA. Section 902(c) of the FFDCA states that nothing in the FFDCA shall affect, modify, repeal, or supersede the provisions of the VSTA. FDA regulations under 21 U.S.C. 510.4 provide that an animal drug produced in full conformance with the VSTA will not be subject to the new animal drug approval requirements of the FFDCA.

Definition of Biological Product

The definition of ''biological products'' in 9 CFR 101.2 was last amended on April 2, 1973 (See 38 FR 8426–8428). Since that time, the VSTA