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7 CFR Part 1000, et al.

Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity to File Written Exceptions to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A69
1005	Appalachian	AO–388–A11
1006	Florida	AO–356–A34
1007	Southeast	AO–366–A40
1030	Upper Midwest ...	AO–361–A34
1032	Central	AO–313–A43
1033	Mideast	AO–166–A67
1124	Pacific Northwest	AO–368–A27
1126	Southwest	AO–231–A65
1131	Arizona-Las Vegas.	AO–271–A35
1135	Western	AO–380–A17

SUMMARY: This tentative decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000. A hearing was held May 8–12, 2000, in Alexandria, Virginia, to consider proposals submitted by the industry to change the formulas. The material issues on the record of the hearing relate to the elements of the Class III and Class IV pricing formulas, including: commodity prices, manufacturing (make) allowances, factors related to product yield, role of producer costs of production, and the issue of whether to omit a recommended decision.

The major changes in the decision would reduce the cheese make allowance used in the Class III component price calculations, increase the make allowances used in the Class IV component price calculations, provide for separate Class III and Class IV butterfat prices, and remove the butterfat adjustment factor from the protein price formula. In addition, the decision requires that processes be undertaken to determine if producers approve issuance of the amended orders on an interim basis.

DATE: Comments are due on or before February 5, 2001.

ADDRESSES: Comments (six copies) should be filed with the Hearing clerk, Room 1081, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

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.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action 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 request modification or exemption from such order by filing 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. 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.

Regulatory Flexibility Analysis

This decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501).

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this regulatory flexibility analysis. When preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This final regulatory flexibility analysis considers these points and the impact of this final regulation on small entities. The legal basis for this action is discussed in the preceding section.

The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, 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. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses constitute approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,200 plants associated with Federal orders, and of these plants, approximately 720 qualify as ''small businesses,'' constituting about 60 percent of the total.

During January 2000, there were approximately 240 fully regulated handlers (of which 186 were small businesses), 43 partially regulated handlers (of which 28 were small businesses), and 71 producer-handlers of which all were considered small businesses for the purpose of this initial

regulatory flexibility analysis, submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 72 percent of all milk marketed in the U.S. and 74 percent of the milk of bottling quality (Grade A) sold in the country. Forty-four distributing plants were exempt from Federal order regulation on the basis of their small volume of distribution.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 3.965 billion pounds in January 2000—38.8 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—approximately 77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that these proposed amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating negative impacts.

One of the principal issues considered at the hearing was the source of price data that should be used to generate prices for milk components and, thereby, prices to be paid to producers. The options considered were the National Agricultural Statistics Service (NASS) surveys of selling prices of manufactured dairy products, Chicago Mercantile Exchange (CME) prices, and producer costs of production. The decision selects the NASS-reported prices as the most appropriate for use in determining product prices because of the considerably larger volume of product represented in those prices series than in the CME price data. Producer cost of production was not included in the calculation of prices because assuring dairy farmers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products.

Various proposals to reduce or increase the levels of the manufacturing (make) allowances of butter, nonfat dry milk, cheddar cheese and dry whey were considered. This decision adjusts these make allowances from their current levels on the basis of data and testimony contained in the hearing record. Most of the adjustments are minimal. Primarily, manufacturing cost surveys done by USDA's Rural Cooperative Business Service and the California Department of Food and Agriculture were used to determine the most appropriate levels of make allowance for the products used in calculating Federal order class prices.

The only other actual collection of manufacturing cost data for cheddar cheese and dry whey that was cited in the hearing record was a survey of cheddar cheese and dry whey manufacturing costs arranged for by the National Cheese Institute. This survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from having overstated costs included in the results, and as a result has less reliability than the two studies used to determine the cheddar cheese make allowance. In addition, one nonfat dry milk manufacturer testified to costs of manufacture that exceeded those of the two studies by a significant amount, mostly in the areas of return on investment and marketing costs. The data did not include any information about the pounds of product manufactured, and could not have been weighted with the data from the two other studies.

Several proposals to change the factor reflecting the yield of nonfat dry milk from nonfat solids in milk would have increased the nonfat solids price, and the Class IV skim price, but ignored the need to reflect the generally lower price and higher manufacturing cost of buttermilk powder that also must be considered in calculating the Class IV nonfat solids price. Testimony and data in the record was used to determine a factor more representative of nonfat dry milk yield and the effect of buttermilk powder price and cost. The alternatives to the formula adopted did not include consideration of the price, cost, and volume of buttermilk powder relative to those of nonfat dry milk.

Proposals were made to reduce the butter and cheese product prices used in calculating the Class IV butterfat price and the Class III prices. The record of this proceeding continues to support the use of the product prices adopted in the final rule in the Federal milk order reform process as representing accurately the values of these products. In the case of adjusting the Grade AA butter price to reflect the value of Grade A butter, the record fails to reveal any source of information for obtaining current prices for Grade A butter. In the case of proposals to remove the 3-cent adjustment between the barrel and 40-pound block cheese prices, there was no testimony about the actual difference in cost between the two types of packaging that overcame testimony that 3 cents is the actual cost difference, or data that indicates that the customary price difference is at least 3 cents.

Proposals to reconsider the class price relationships in the orders were considered, although a proposal to use a weighted average of the Class III and Class IV prices as a Class I price mover was not noticed for hearing in this proceeding. The hearing record supports the continued relationships between the Class IV and Class II prices, and between the higher of the manufacturing class prices and the Class I price.

A proposal that the Class II differential be changed to negate any changes in the Class IV price formula that would affect the current price relationship between nonfat dry milk and Class II failed to consider that the Class II-Class IV price difference adopted in Federal order reform is based on the difference in the value of milk used to make dry milk and the value of milk used to make Class II products.

Proposals that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices did not address the rationale for the current Class I price differentials above the manufacturing price levels for the purpose of obtaining an adequate supply of milk for fluid (drinking) use.

The changes to the Class III and Class IV price formulas included in this decision should have no special impact on small handler entities. All handlers manufacturing dairy products from milk

classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing are required by the Agricultural Marketing Agreement Act and should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

Interested parties are invited to comment on the probable regulatory and informational impact of the amended provisions of this decision on small businesses. Also, parties may suggest modifications of this decision for the purpose of tailoring the applicability of the provisions to small businesses.

An analysis was done on the effects of the alternatives selected, and is summarized below.

Analysis

In order to assess the impact of changes in Federal order milk pricing formulas, the Department conducted an economic analysis. While the primary purpose of this decision is to amend the product pricing formulas used to price milk regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also affect the prices of regulated milk classified as Class I and Class II.

The modifications in this decision are analyzed simultaneously as a change from the current set of formulas. This analysis focuses on impacts on milk marketed under all Federal milk marketing orders, and treats the Federal order system as a single entity. Milk marketed in California, milk marketed under other state regulations and unregulated milk are treated separately. The hard manufactured dairy product markets are national.

Scope of Analysis

Impacts were measured as changes from the model baseline as adapted from the USDA dairy baseline published in February 2000. The USDA baseline is a national, annual projection of the supply-demand-price situation for milk and dairy products. Baseline assumptions are: (1) The price support program would end on December 31, 2000; (2) the Dairy Export Incentive Program would continue to be utilized; and (3) the Federal Milk Marketing Order Program would continue as reformed on January 1, 2000.

It was necessary to make the following simplifying assumptions in order to conduct the analysis. The Federal order share of U.S. milk marketings is about 67 percent. About 60 percent of all milk manufactured (Classes II, III, and IV) is marketed under Federal order regulation. Given the prominence of Federal order marketings in the U.S. milk manufacturing industry, prices paid for manufactured milk under Federal orders cannot get too far out of alignment with the value of milk for manufacturing in the rest of the United States. Similarly, the fluid prices in non-Federal order markets are largely reflective of Federal order minimum Class I prices.

California stands out as the state with the highest production and has its own market regulations. California milk marketings are estimated as a function of the California pool price. Non-California milk marketings are estimated as a function of an all-milk price that incorporates the Federal order pool price and over-order payment estimates. The Federal order share of those non-California marketings is estimated as a function of the Federal order all-milk price relative to the estimated value of manufactured milk.

Cooperatives manufacture about 40 percent of the cheese and about 70 percent of the butter and nonfat dry milk manufactured nationally, and sell such dairy products in wholesale and retail markets in competition with other manufacturers. A baseline assumption is that a cooperative passes through to its members the best price and best return on investment that it can. A higher minimum Federal order price could result in cooperatives paying higher monthly prices for milk, but would result in lower returns on investments paid at the end of the year. Total cash receipts for member milk marketings processed by cooperatives would be changed only by changes in wholesale product prices.

Specifically, it is assumed that changes in pay prices and cash receipts to cooperative members for raw milk marketed by cooperatives, or to non-members for milk marketed to proprietary handlers would be fully reflected by lower or higher Federal minimum class prices. Changes in pay prices and cash receipts to cooperative members for milk manufactured by cooperatives would be fully reflected by the manufacturing milk price that moves with changes in manufactured product prices only. This applies to 40 percent of the Class III milk and 70 percent of the Class IV milk. In the case of cooperatives, it is assumed that differences between the model generated average value for manufactured milk and the average of the Class II, Class III, and Class IV prices would be passed on to producer-members in the form of higher or lower pay prices. In the case of proprietary plants, it is assumed that the plants would retain the differences. However, in the case of a loss, proprietary manufacturing plants could de-pool milk to equalize their margins with cooperative plant margins. In the model, this is accounted for by an equation that estimates the Federal order share of non-California marketings as a function of the ratio of the Federal order all-milk price relative to the estimated value of manufactured milk. The Federal order share increases as the price ratio increases.

In addition to altering the sharing of manufacturing proceeds between manufacturing plants and producers the decision's formula changes have an impact on Class I and Class II prices. Class II prices move in concert with changes in Class IV. The effects on Class I prices depend upon the effect on the Class III price relative to the Class IV price. Class I prices are based on the higher of the Class III or Class IV prices.

Retail prices of fluid milk and Class II soft manufactured products are assumed to respond penny for penny to changes in the milk cost of these products. Wholesale and retail margins are assumed unchanged from baseline. Demands for Class I and Class II products are functions of price, per capita consumption and population. Wholesale prices for cheese, butter and nonfat dry milk reflect supply and demand for these products. The milk supply for manufacturing these hard products is the result of milk marketings minus the volumes demanded for Class I and Class II products. The remaining volume is allocated to Class III and Class IV according to returns to manufacturing in each class. Demands for products in these classes are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of price, income, and the proportion of food expenditures spent away from home.

Summary of Results

The results of the amendments to the Class III and Class IV formulas are summarized using five-year, 2001–2005, average changes from the model baseline. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

In addition, the advanced Class I base price is driven by the higher of the Class III or Class IV prices. With the amended formulas, the Class I base price is the Class IV price in all years of the analytical period. In each year, the Class I price, at the class average test of 2 percent butterfat, is slightly above the baseline. This results in a small reduction in the demand for skim milk, and to a lesser extent butterfat, for Class I use. Milk generally shifts from Class I use to the production of butter, nonfat dry milk, and cheese in generally the same proportions as in the baseline. As a result, the wholesale prices of butter, nonfat dry milk and cheese each decrease slightly.

Producers. Over the five-year period, the changes taken as a whole result in a small increase of about $0.007 per hundredweight in the Federal order minimum blend price for milk at test. Including the effect of premiums, the average milk price received by Federal order producers is expected to average up $0.009 per hundredweight. Federal order marketings increase by an average 139 million pounds and cash receipts increase by $30 million (0.18 percent) from baseline receipts of $16,414 million. U.S. milk marketings increase by an average 24 million pounds annually, and cash receipts increase by $15.5 million (0.07 percent) from baseline receipts of $23,841 million.

There is an increase of $0.007 per hundredweight in the five-year annual average U.S. all-milk price.

Milk Manufacturers and Processors. For 2001, the Class III price at test (3.61 percent butterfat) is increased by $0.02 per hundredweight under the amended marketing orders. For the second year, Class III is unchanged from baseline and then decreases slightly in 2003–2005. For the five-year period, Class III at test averages down about $0.015 per hundredweight.

The major change is the five-year annual average increase in the minimum Class III butterfat price of about $0.73 per pound, and a decline in the average minimum Class III skim milk price of about $2.72 per hundredweight. The estimated NASS cheese price, at 38 percent moisture, decreases an average $0.003 per pound (0.2 percent).

Butterfat prices for Class II and Class IV average down slightly ($0.008 per pound) for the five-year period, while skim milk prices increase about $0.11 per hundredweight. This results in an increased Class II milk cost, at test, to processors of about 0.12 percent. The butter price decreases an average 0.5 percent while the average nonfat dry milk price decreases by about 0.3 percent for the period.

The average U.S. value of milk in manufactured products decreases by about $0.03 per hundredweight for the period.

Class I costs to fluid processors (at the class average butterfat of 2 percent) average about $0.03 per hundredweight (0.23 percent) higher, as a result of higher skim milk prices each year.

Consumers. The expected $0.03 per hundredweight increase in the Class I price for 2001–2005 results in about a $0.0025 increase in the price per gallon of fluid milk for consumers. Consumer costs for fluid milk are estimated to increase on average by about $10.4 million annually over the five-year period.

The price of butter is estimated to decrease on average $0.006 per pound for the period. Cheese is estimated to decrease $0.003 per pound. Consumer expenditures on butter are estimated to decrease by about $5.6 million, and on American cheese, decrease by about $10.6 million annually over the five-year period.

A complete economic analysis is available upon request from Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7091, e-mail address howard.mcdowell@usda.gov

Civil Rights Impact Statement

This decision is based on the record of a public hearing held May 8–12, 2000, in Alexandria, Virginia, in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, that required the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000.

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who choose to deliver milk to handlers regulated under a Federal order will receive the minimum blend price. It also was concluded that ''one of the reasons for success of the Federal milk order program is that all producers benefit through assistance in developing steady, dependable markets, reducing price instability and unnecessary price fluctuations, and assurances of a minimum price for their milk. With this assurance, producers are more willing to make the significant cost investments in milk cows and equipment needed to produce high-quality milk. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers.''

The issues addressed at the May 2000 hearing are issues that were addressed as part of Federal milk order consolidation and reform. Establishing representative make allowances in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. The decision should result in no differential benefits in dividing the pool among all producers delivering milk to those regulated handlers. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently that the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. The hearing notice in this proceeding invited interested persons to address any possible civil rights impact of the proposals being considered in testimony at the hearing. No such testimony was received.

Copies of the Civil Rights Impact Analysis done for the final decision on Federal milk order consolidation and reform can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: www.ams.usda.gov/dairy/.

Prior documents in this proceeding: *Notice of Hearing:* Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), 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 tentative decision with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, by the 60th day after publication of this decision in the **Federal Register**. Six 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 Hearing notice specifically invited interested persons to present evidence concerning the probably regulatory and informational impact of the proposals on small businesses. To the extent that this issue was raised, it is considered in the following findings and conclusions.

This decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501). The findings and conclusions set forth below are based on the record of a public hearing to consider proposals submitted by the industry to change the pricing formulas in the marketing agreements and the orders regulating the handling of milk in the Northeast and ten other marketing areas held in Alexandria, Virginia, on May 8–12, 2000. Notice of such hearing was issued on April 6, 2000 and published on April 14, 2000 (65 FR 20094).

Brief Summary of Changes to Class III and IV Formulas

As instructed by the legislation requiring this proceeding, the Class III and IV pricing formulas, and all of the elements of the formulas, were re-considered in developing this decision. The changes made in the Class IV component formulas are minimal. The product prices used in the Class IV formulas (butterfat and nonfat solids) are unchanged. The make allowances for butter and nonfat dry milk are increased slightly, by .1 cents for butter and .3 cents for nonfat dry milk. The divisor used in the Class IV butterfat component formula is unchanged, while the 1.02 divisor used in the nonfat solids price formula to reflect the relative values and yields of buttermilk powder and nonfat dry milk is eliminated.

The Class III component price formulas are changed to a greater degree. The most substantive change is to calculate a Class III butterfat price on the basis of the value of butterfat in cheese, not on its value in butter. At the same time, the protein price formula would reflect the value of protein in cheese, without including a butterfat factor in the formula to adjust for the differential value of butterfat used in butter and cheese. The product price for cheese is changed to reflect a 38-percent moisture adjustment in the barrel cheese price to place that price on the same moisture basis as the block cheese price. The dry whey price, for computing the other solids price, is unchanged. The change in the make allowance for cheese is minimal, and the whey powder make allowance is increased only enough to remain the same as that for nonfat dry milk. As with the current component prices, the Van Slyke formula is used to determine the yield effects of both the Class III protein and butterfat prices.

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

1. Role of producer costs of production.
2. Commodity prices (CME vs. NASS).
3. Commodity and component price issues.
   a. General approaches on make allowances.
   b. Class IV butterfat and nonfat solids prices.
   c. Class III butterfat, protein and other nonfat solids prices.
   d. Effects of changes to Class III and Class IV price formulas.
4. Class price relationships.
5. Class I price mover.
6. Miscellaneous and conforming changes.
   a. Advance Class I butterfat price.
   b. Classification.
   c. Distribution of butterfat value to producers.
   d. Inclusion of Class I other source butterfat in producer butterfat price computation.
7. Issue of whether to omit a recommended decision.

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. Role of Producer Costs of Production

Proposal 29 in the hearing notice proposed that producers' costs of production be incorporated into the Class III and Class IV pricing formulas. A number of dairy farmer witnesses testified that, just as manufacturing processors are assured that their costs of processing milk products will be covered, dairy farmers should also have some assurance that they will be able to continue to operate their dairy farms without losing money. Under the current system, according to the National Farmers Union (NFU) witness, incorporating a make allowance for processors but not for producers leaves dairy farmers to bear the entire burden of changes in supply and demand.

Unfortunately, as explained in both the proposed and final rules under Federal order reform, assuring producers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products. As noted by the DFA witness, although pricing proposals incorporating cost of production have been noticed and reviewed several times in the last decade without success, if a sound mechanical concept could be advanced that overcomes the objections relative to supply and demand, it should be considered.

The witnesses testifying on behalf of NFU and National Farmers Organization (NFO) both supported the concept of variable make allowances, in which the allowances would be adjusted for changes in supply and demand as a means of addressing the problem of manufacturers being insulated from changes in supply and demand by their fixed make allowances. In other words, increases in dairy farmers' costs of production would be reflected in reductions in manufacturers' margins. Both proposals would divide Class III and Class IV values by dairy farmers' costs of production. The NFU proposal would use an average national cost of production, presumably as published by USDA's Economic Research Service, and the NFO proposal would use the CDFA milk production cost index.

Although the concept of assuring that as costs of production increase, manufacturing allowances would decline to the extent product prices do not also increase has appeal, it is difficult to believe that such a proposal would be in the best long-term interests of dairy farmers, processors, or consumers. It certainly could easily fail to cover processors' costs to the extent that would keep them operating. It is

easy to construct a situation in which milk production costs increase because of feed shortages, resulting in reduced make allowances to processors. When the manufacturers' make allowances decline to the point the variable costs of processing are not covered, they would have little choice but to cease processing. At that point, dairy farmers who are facing high costs of production would have to find alternative outlets for their milk. If many processors reach the point at which they must make the decision to cease operating near the same time, there likely would be very disorderly conditions among dairy farmers looking for outlets for their milk. In addition, consumers would be likely to find shortages in the availability of dairy products.

This proceeding must join the list of those in which cost of production proposals have been considered and found wanting in terms of being able to reflect both the supply and demand sides of the market for dairy products. There is no evidence in the record that either the ERS or the CDFA index has been used to price milk. As noted by the NFO witness, the current pricing system uses the interaction of supply and demand for milk products as an indirect method of meeting the pricing requirements of the Agricultural Marketing Agreement Act of 1937 for milk. According to the witness, producer milk has a value before it is processed. In today's market, it is hard to agree that milk has a market value to consumers without being pasteurized, at least.

2. Commodity Prices (CME vs. NASS)

As recommended in the proposed rule and adopted in the final rule on Federal order reform (published on September 1, 1999 (64 FR 47898)), commodity prices determined by surveys conducted by USDA's National Agricultural Statistics Service (NASS) are currently being used in the component price formulas that replaced the BFP. This decision makes no changes in the source of product price data.

Several proposals (1, 5, 10 and 19) were considered during the current proceeding that recommended using prices reported by the Chicago Mercantile Exchange (CME) instead of the NASS surveys to determine commodity prices. Both the CME and the NASS surveys were supported by testimony at the hearing and in briefs. The CME is a cash market where speculators, producers, and processors can buy and sell products. It is a mechanism for establishing prices on which the dairy industry relies. Thus, a lot of contracts to buy and sell dairy products are based on CME prices. A USDA witness testified that he is unaware of any other indices used to price cheese in the U.S. According to several witnesses, cheese and butter processors generally base their contract sales on CME prices.

The NASS price survey gathers selling prices of cheddar cheese, Grade AA butter, nonfat dry milk and dry whey from a number of manufacturers of these products nationwide. At the time the proposed rule on Federal order reform was published (January 30, 1998), the NASS survey included prices for cheddar cheese only. This survey had begun in March 1997. In September 1998, before the final decision was published in April 1999, NASS began surveys of Grade AA butter prices, dry whey prices, and nonfat dry milk prices. In developing these commodity surveys, input was obtained from the dairy industry on appropriate types of products, packaging, and package sizes to be included for the purpose of obtaining unbiased representative prices. A sale is considered to occur when a transaction is completed, the product is shipped out, or title transfer occurs. In addition, all prices are f.o.b. the processing plant/storage center, with the processor reporting total volume sold and total dollars received or price per pound. NASS Dairy Products Prices reports wholesale cheddar cheese prices for both 500-pound barrels and 40-pound blocks, USDA Grade AA butter, USDA Extra Grade or USPH Grade A non-fortified dry milk and USDA Extra Grade edible non-hygroscopic dry whey. A more-detailed description of the surveys can be found in the final decision of April 2, 1999 (64 FR 16093).

The proponents of proposal 1, Western States Dairy Producers Trade Association, et al. (WSDPTA), a group of several trade associations and cooperatives, proposed that the NASS commodity prices for butter, cheese, and nonfat dry milk that currently are used for computing the Federal order component prices be replaced with prices determined by trading on the CME. Dry whey was not included in the proposal because there is no dry whey cash contract traded on the CME. A witness from WSDPTA did not oppose the collection and reporting of NASS data, but expressed the opinion that while it serves an important function as information, it should not be used to establish prices. The proponents presented several benefits of using the CME over the NASS survey for commodity prices.

Proponents explained that by using CME prices in the formulas, prices would be known immediately rather than a week later when the NASS prices are published, reflecting more quickly the supply-demand conditions for dairy products. The one-week delay is caused by the time necessary to collect data. A witness for National Farmers Organization noted that interested persons are able to check the CME value of products on a daily basis and use the reported prices as a factor to establish what they're going to be paying or paid for cheese.

A witness from WSDPTA went on to explain that buyers, sellers, and speculators trade the CME, trying to obtain a price in their favor, while the price actually is determined by supply and demand forces. He described the rules as fair and the results as transparent, with participants having a number of interests. The witness continued by noting that the CME price result is instant and results cannot be altered. In contrast, he stated, NASS prices are reported by sellers only, who are not disinterested parties. He argued that NASS respondents can modify their numbers or file an initial report after calculating the price impact of the latest reports.

The proponents also concluded that the urging by many hearing participants that the NASS price series include mandatory participation and be audited proves that the NASS series is not reliable enough to be used as a price-discovery method.

Finally, the witness from WSDPTA expressed the view that the NASS price series would feed on itself and result in price setting, not price discovery. He continued by noting that plants and their buyers will obtain prices one week and sell the commodity in the following week at a price derived in large part from the price obtained in the prior week. The witness compared the NASS survey to the California State survey of powder prices which, he claimed, results in a circular pricing system that is mathematically incapable of fully reflecting the top of the market price for powder because so little of the survey volume is priced off of the spot market. Proponents expressed the belief that this circularity causes prices to remain lower than they would without it, and that prices would increase more slowly and decrease more rapidly than would prices on the CME, causing overall lower prices for dairy farmers.

Opponents of changing from NASS to CME prices to compute component prices included International Dairy Foods Association (IDFA), Dairy Farmers of America (DFA), and National Milk Producers Federation (NMPF). Witnesses for these parties argued that the NASS survey includes pricing based

on a significantly larger volume of product than does the CME. In the case of the nonfat dry milk market, the table of 1999 monthly Chicago Mercantile Exchange Cash Markets data from the 1999 Annual Dairy Market Statistics showed that there were no sales reported for either extra grade or Grade A in the year 1999.

According to a witness from IDFA, the volume of cheddar cheese in the NASS survey is equal to 26.4 percent of all cheddar cheese production in the U.S. for the period September 1998 through February 2000. During the same period, the CME volume of cheddar cheese traded represented only 1.7 percent of U.S. cheddar cheese production. The witness stated that for the same 18-month period, the NASS survey volumes represented 14.4 percent of all U.S. butter production while CME trading consisted of only 2.6 percent. He also noted that switching from the NASS survey data to the CME data would result in a change from a very broad to an extremely thin representation of actual product transactions.

Opponents to the proposal to use CME prices also pointed out that prices at the CME are Chicago or Midwest prices based on the delivery location specification of the contract. Therefore, they argued, the scope of the reported prices for cheese, butter, and nonfat dry milk are not national. A witness for Kraft noted that reliance on the CME alone would exclude the substantial and growing volume of cheese produced in the western United States (U.S.), particularly California. A witness for Northwest Dairy Association suggested that a transportation credit would need to be used with CME prices, at least in the West, to reduce the value of the CME to a more representative level. Opponents went on to explain that since the NASS survey contains data from plants located all over the United States, NASS prices represent a national scope of the prices of each of the particular commodities.

According to the testimony in the record and a number of the briefs, the cheese and butter sellers and buyers look to the CME to identify the most current price levels. As a result, prices move in response to supply and demand conditions in the marketplace as reflected at the CME. Since the transaction prices of commodities are based off of the CME, it is difficult to see how the NASS survey can cause, or result in, circularity. The NASS prices reflect the CME prices with a short lag, but are based on a much greater volume, enhancing the stability of the price series. Continued use of the NASS price survey appears to be the best method of obtaining reliable data about commodity prices.

As stated in the final decision on Federal order reform, NASS data traditionally have been collected via a survey with voluntary participation. The price information, like most NASS data, is not audited. NASS, however, applies various statistical techniques and cross-checking with other sources to provide the most reliable information available. The issue of mandatory and audited NASS data, however, will not be discussed further as NASS is not authorized to conduct such activities, and these issues are not within the scope of this rulemaking.

3. Commodity and Component Price Issues

a. General Approaches on Make Allowances

Changes to the make allowances for each of the product formulas used in calculating component prices were proposed and discussed at length during this proceeding. Except in the case of dry whey, make allowances adopted in the component price formulas in this decision are calculated using a weighted average of the most recent California cost of production study and the Rural Business Cooperative Services (RBCS) study. A marketing cost of $.0015 per pound is added to both the California costs and the RBCS costs, as in the Final Rule, and the California value for return on investment is used to adjust the RBCS cost. This is generally the same approach used to determine the appropriate make allowances in the current orders, and results in values that differ little from the formulas in the current orders.

For the calculation of the Class III ''other nonfat solids'' price, neither the California nor RBCS studies included information on the cost of making dry whey, and a survey done for this proceeding under the auspices of IDFA was not considered sufficiently reliable for use in establishing a make allowance. Consequently, the ''other solids'' make allowance should continue to be the same as that used for nonfat dry milk.

A number of the proposals considered in this proceeding would change the manufacturing, or make, allowances adopted for the pricing formulas under Federal order reform. There was considerable testimony on the appropriate factors to be considered in establishing make allowances, and several sources of data were cited as the most accurate to use for such a purpose. In addition, a number of witnesses testified about the philosophical basis for determining appropriate manufacturing allowances for milk pricing formulas.

Two surveys of product manufacturing costs that were averaged for use in calculating make allowances under Federal order reform were the California Department of Food and Agriculture (CDFA) study, which is done annually and includes nearly 100 percent of dairy products manufactured in California, and the Rural Business Cooperative Service (RBCS) study, which is conducted annually by USDA as an in-plant benchmark study for participating cooperative associations. These two surveys had both been updated since earlier versions had been used in determining the manufacturing allowances used in the current component pricing formulas. In addition, the National Cheese Institute (NCI), an affiliate of the International Dairy Foods Association (IDFA), contracted with a third party to conduct a survey of the costs of manufacturing cheese and whey powder for use in this proceeding.

A witness for National Milk Producers Federation (NMPF) stated that make allowances should reflect the costs incurred by average plants manufacturing the particular dairy product used in the component/Class price formulas: butter, nonfat dry milk, cheese, and dry whey. The witness went on to explain that the procedure used by the Secretary for determining the make allowances for the Final Rule, using an average of the California cost of production studies and the Rural Business Cooperative Services (RBCS) study, was sound and that the same procedure should be used as a result of this hearing, using the updated data from both surveys. In calculating an appropriate make allowance, the witness supported addition of a marketing cost of $.0015 per pound to both the California costs and the RBCS costs, as in the Final Rule, and the California value for return on investment used to adjust the RBCS costs in the Final Rule. The witness explained that both of these factors should be included as they are legitimate and necessary costs incurred in operating manufacturing plants.

The witness for IDFA supported inclusion of the California cost studies in the computation of the make allowance; however, the witness stated that the appropriate procedure for computing the make allowance for cheese was to compute a weighted average of the California cost studies and the NCI survey. The witness explained that the RBCS study does not

include all the necessary costs that must be recovered in the make allowance, and that the NCI survey is needed to determine what the additional cost values should be. The costs that the IDFA witness pointed out that are not included in the RBCS survey, but are included in the NCI survey, are general plant administrative costs, such as the plant manager's salary and corporate overhead; return on investment or capital costs; and marketing costs.

The IDFA representative testified that the danger inherent in regulated prices is setting the manufacturing allowance at a level too low to assure that manufacturers will be able to recover their costs of manufacturing finished products and have the money needed to invest in new plants. The witness pointed out that an inadequate make allowance would force manufacturers either to move to areas that do not have regulated pricing or go out of business. At the very least, the witness explained, the manufacturers would not invest in new plants and equipment, which in the long run would cause a decline in the productivity of the dairy industry. A number of briefs filed on the basis of the hearing transcript emphasized the importance of covering all of handlers' costs of manufacturing, and not just average costs.

The IDFA witness explained that if make allowances are established at too low a level, proprietary plants are placed at a competitive disadvantage relative to cooperative-owned plants. The witness explained that since cooperatives do not have to pay their producers the minimum order price, as proprietary plants are required to do, cooperative plants can reduce the prices paid to member producers to make up the difference in cost.

The IDFA witness explained further that the problem with a make allowance established below the amount needed to cover plant costs occurs because the plant sells the finished product at the same price that is used in the formula for establishing the minimum price the plant must pay for the raw material, milk. The manufacturing allowances are the only place the plant has the opportunity to cover its costs, and those allowances are fixed in the formula that determines the raw material price.

The witness for IDFA asserted that there was very little risk in setting a make allowance too high. He explained that if the make allowance is established at a level above plant costs, the additional revenue stream will be corrected through market forces by requiring the plant operators to pay competitive over-order premiums to milk suppliers to obtain an adequate supply of milk.

A witness for Western States Dairy Producers Trade Association, *et al.* (WSDPTA), explained that the most important part of determining a manufacturing allowance is to pick a method and stick with that method. The witness testified that the appropriate method is to use the results of the RBCS study with adjustments to include factors for marketing costs and for capital costs. The witness pointed out that use of the RBCS study is appropriate because the study is voluntary, represents the costs of making the particular commodities, and the plants are geographically widely dispersed. The WSDPTA witness stated that including the results of the California study in the computation of the make allowance for pricing Federal order milk is inappropriate since there is no logical reason for considering the manufacturing costs of plants that do not procure any of the milk that would be priced using those costs.

A witness for the National Farmers Organization (NFO) proposed a variable make allowance using the RBCS make allowances as a base adjusted by the relationship between the particular commodity prices for butter, nonfat dry milk, dry whey, and cheese, and the California Department of Food and Agriculture (CDFA) milk production cost index. The witness explained that a fixed make allowance, as contained in the current pricing system, does not vary with market conditions and creates a situation in which manufacturers will not respond to market signals since the manufacturers will receive a profit no matter what the supply and demand is for the finished products. The witness explained that as long as the make allowance allows manufacturers a sufficient return the manufacturers will continue to produce the finished product even if there is limited demand for the product, thus resulting in a continued low price paid to producers for their milk. The witness characterized a variable make allowance tied to the cost of producing milk as a market-oriented system.

A witness for National Farmers Union (NFU) also proposed a variable make allowance composed of the weighted average RBCS and California manufacturing cost surveys, without a marketing allowance, adjusted by the national average cost of production. The witness explained that the current system does not have market accountability, since there is no incentive for a manufacturer to restrict production when declining prices indicate reduced demand for the product. As a result, according to the witness, the pricing system effectively isolates the manufacturing side of the industry from supply and demand forces, leaving the producers left to bear the burden of changes in supply and demand. The witness explained that the California system, in which manufacturers' production costs are covered by producers through the make allowance, continues to produce a large quantity of lower-valued products because the pricing system makes the manufacturer immune to the supply of and demand for the products. The witness blamed the California make allowance system for the traditionally low milk prices in California, that, he claimed, result in expansion of dairy herds to make up for reduced cash flow. The witness predicted that if the Federal order system follows the same pricing path, the same production patterns as witnessed in California would follow in the rest of the United States.

Most hearing participants agreed that the make allowance should cover the cost of converting milk to a finished manufactured dairy product. However, several participants disagreed with the IDFA contention that there is very little risk in setting the make allowance too high. They argued that if the make allowance is set in excess of the cost to manufacture finished products, the additional revenue would be kept by the manufacturing plants as higher profits and not distributed to the producers supplying milk to the plant. They explained that in many parts of the country there is little if any competition for the dairy farmers' milk and therefore no incentive for a plant to pay above the minimum Federal order price. These plants, according to the witnesses, could be expected to keep the extra make allowance for themselves.

Several witnesses opposed the idea of setting make allowances at levels that guarantee plants a profit, or at least a return on investment, when the dairy farmers supplying milk to the manufacturing plants have no similar assurances for covering the costs of producing milk. These witnesses pointed to the Agricultural Marketing Agreement Act of 1937, Sec. 608c(18), as justification for setting a lower make allowance for plants, resulting in higher milk prices that would come closer to covering dairy farmers' costs of producing milk.

As supported by most of the hearing participants, the make allowances incorporated in the component price formulas under the Federal milk orders should cover the costs of most of the processing plants that receive milk pooled under the orders. In part, this

approach is necessary because pooled handlers must be able to compete with processors whose milk receipts are not priced in regulated markets. The principal reason for this approach, however, is to assure that the market is cleared of reserve milk supplies.

Although the RBCS survey does not include such costs as general plant administrative costs, return on investment or capital costs, and marketing costs, it is a survey that has been done for sixteen years with the same fundamental methodology, and with some continuity of participants. Because the survey is done for the benefit of the participating organizations (cooperatives) to help them identify their costs and compare them with those of their peer group, there is every reason to believe that the costs provided are as accurate as possible. In addition, the years of experience with the survey have enabled USDA to shape the questions to obtain more accurate results.

When the RBCS survey results are adjusted to include the factors that were mentioned above as not included by using the values for those factors from the CDFA survey, the two surveys' costs are comparable, especially considering that the RBCS survey represents manufacturing plants with a wide distribution around the U.S., while the CDFA survey includes only California plants. The CDFA survey is also done every year, and is done according to a published procedure manual, with the costs being audited by personnel employed by the State for that purpose. Although no CDFA employee was available to respond to questions about the conduct of the survey, official notice was taken of the procedure manual and of California publications associated with manufacturing cost data. In addition, several witnesses who are deeply involved with the California dairy industry testified regarding the perceived reliability of the survey results.

In contrast to the RBCS and CDFA surveys, the survey of cheese and whey powder manufacturing costs arranged for by NCI was developed solely for the purpose of establishing costs to be used in determining make allowances for this proceeding. The survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from having overstated costs included in the results. No one who actually conducted the survey was made available to testify, and although the IDFA witness stated that survey participants would testify regarding their responses to the survey later in the hearing, none of the participating firms' witnesses would respond to questions about their firms' results. Although less weight must be given the NCI survey than either the RBCS or the CDFA surveys for the reasons stated above, the NCI survey's resulting manufacturing costs for cheese are not considerably different from a weighted average of the RBCS and the CDFA surveys. In fact, although the IDFA hearing participants went to great lengths to discredit the RBCS study for use in identifying an appropriate level of manufacturing costs, the hearing record reflects that the NCI survey of cheese and dry whey manufacturing costs used the RBCS 1996 survey results to identify outliers (plus or minus 10 percent) in the study commissioned by NCI.

As a result of the differences in conduct of the three surveys, manufacturing costs used to determine appropriate make allowances for cheddar cheese, butter and nonfat dry milk in this proceeding are calculated primarily from a weighted average of the RBCS and CDFA surveys, with a check against the NCI survey cost of manufacturing cheddar cheese. The cost of manufacturing nonfat dry milk continues to be used as the cost of making whey powder due to the nature of the information in the hearing record about the actual costs of drying whey.

One proposal included in the hearing notice would have eliminated any marketing allowance from the make allowances, and a number of witnesses' testimony objected to the inclusion of return on investment. The American Farm Bureau witness questioned the need for a marketing allowance since producers already pay a 15-cent assessment for promotion and research. A brief filed by the proponent of eliminating the marketing allowance stated that the allowance appears to be an ''adjustment'' or a ''hedge,'' since it is not defined in the final rule.

There was general agreement among those testifying that a marketing allowance should be included in manufacturing costs, but no consensus about the appropriate number. Some of the costs covered by the marketing allowance include maintaining and staffing warehouses, supporting a marketing and sales staff, transporting product to market, and accounting costs associated with the sale of products. The NCI survey identified a marketing cost of $.0011 per pound of product, while the Dairy Farmers of America (DFA) witness stated that DFA's costs were approximately $.0018. The DFA witness testified that because the costs included in the activities designated as marketing generally fall within a common department under common management, it is appropriate to apply the same allowance to each product.

A witness for Northwest Dairy Association, a cooperative association in the Pacific Northwest, stated that their marketing costs are $.0026, but identified costs associated with the aging of cheese as included in that number. Since the NASS survey price does not include cheese intended for aging, the marketing allowance certainly should not include costs of aging cheese. The Associated Milk Producers, Inc., (AMPI) witness used a $.0024 marketing allowance in the calculation of AMPI's proposed make allowance for nonfat dry milk. The witness for Agri-Mark, Inc., a large Northeast cooperative association with several processing plants, stated that Agri-Mark's estimates of marketing costs ranged from $.0025 to $.005.

The costs identified as those included in a marketing allowance are necessarily incurred in getting a product to market, and are not related to the consumer education and advertising activities covered by the National Dairy Board assessment. Since the marketing cost determined by NCI is the only one of the estimates included in the hearing record that is supported by a survey, and it varies from the $.0015 rate included in the Final Rule by only 4 one-hundredths of a cent and applies only to cheese and dry whey, there seems to be no solid basis for making any change to the current marketing allowance.

Some producer witnesses objected to the inclusion of any allowance for return on investment in manufacturing allowances on the basis that dairy farmers are assured of no such return. The CDFA manufacturing cost surveys include allowances for depreciation, included in the non-labor processing costs; and for return on investment, which represents the opportunity cost of the processors' resources invested in the business. These costs are supported by audited data.

Both the marketing allowance and return on investment factors should be included in the manufacturing allowances provided in the component price formulas at the rates supported by the California data. If processors are not provided enough of a manufacturing allowance to market the product they process, or to earn any return on investment, they will not continue to provide processing capacity for producers' milk. At the same time, the manufacturing allowances incorporated in the formulas will not provide enough of an allowance to assure that every processor, no matter how inefficient or high-cost, will earn a profit. Allowances set at such a level certainly could result

in the situation warned of by producer groups in which processors manufacture greater volumes of product than the market demands because they are guaranteed a profit on all their production. As a result, the only way to market all of the product would be to reduce prices, with a profit still locked in through the make allowance, which would result in decreasing prices paid to producers. In addition, manufacturers who are assured a profit on all of their output would have no incentive to make a sufficient quantity of milk available for fluid use—a basic goal of the Federal milk order program.

One area addressed by several hearing participants in testimony and in briefs as appropriate to consider in establishing make allowances or yields was the loss of milk components during manufacturing processes. The orders have always provided an allowance for shrinkage, and continue to do so, but inflating costs of production or reducing yield factors to reflect shrinkage would not properly reflect the value of producers' milk used in manufactured products. Processing costs determined by the surveys described above, which underlie the manufacturing costs incorporated in the pricing formulas, are expressed in cents per pound of end product manufactured, not in the cost per hundredweight of milk of converting milk to manufactured products. The component pricing formulas are based on the content of those components in the finished products for which a manufacturing cost per pound has been established. Both the CDFA and RBCS cost surveys allocate all plant costs to actual end product, a process which should take shrinkage into account. Similarly, the yield factors in the formulas refer to the amount of finished product resulting from the processing of a given volume of input. Both of these factors in the pricing formulas include consideration of shrinkage.

The detailed explanation of each product's manufacturing allowance is included with the description of its primary component's pricing formula later in this decision.

b. Class IV Butterfat and Nonfat Solids Prices.

Class IV Butterfat Price. This decision continues to use the NASS price for Grade AA butter for calculating the Class IV butterfat price, and changes the manufacturing allowance in the butterfat price formula by 1/10 of a cent per pound of butter. The .82 divisor in the price formula is unchanged.

Several proposals were heard that would reduce butterfat prices, either by reducing the butter price used in the computation of the butterfat prices for all classes, or subtracting a fixed amount from the butterfat price computed for Class IV. Proposals also were made that would change the make allowance used in calculation of the butterfat prices. There were no proposals to change the butterfat divisor of .82, although one witness representing a western cooperative association suggested that it be reconsidered as he felt it didn't include a shrinkage factor.

Product Price (Butter). Several witnesses for proprietary processor proponents of the proposal to deduct six cents from the butter price before computing the butterfat price stated that historically the value of butterfat in the Federal milk orders has been based on the price of Grade A butter. The witnesses explained that an equivalent price determination had been issued in 1998 when the CME discontinued trading Grade A butter that nine cents would be subtracted from the Grade AA butter price for use in calculating Federal order butterfat prices. This equivalent price, according to the witnesses, was found to be ''essential'' to the continued operation of the Federal milk order program and continued the policy of basing butterfat pricing under the Federal milk orders on a value below that of Grade AA butter.

The witnesses complained that under Federal order reform the butterfat value is determined by using the NASS Grade AA price of butter, which effectively increases the butterfat value under Federal milk orders. According to proponents' calculations, the increase does not amount to a full nine cents, but is tempered by the use of the NASS Grade AA price, which has averaged approximately three cents below the CME Grade AA price, in the butterfat pricing formula. Therefore, they stated, the actual increase in the butter price used to calculate butterfat prices is approximately six cents. According to the witnesses, subtraction of six cents from the NASS butter price would return the relationship between the butterfat value under the orders and the selling price of butter to the relationship that existed prior to Federal order reform.

Several witnesses explained that when handlers must pay for butterfat on the basis of the Grade AA butter market they cannot then sell cream or finished products at a price that would allow them to recover their costs. They testified that cream is sold at a price that is termed a ''multiple'' of the butter price, and that the multiples used when the butterfat price was calculated from the Grade A butter price have not adjusted to the new pricing formula using Grade AA butter.

The IDFA witness pointed out that the IDFA proposal to subtract six cents from the NASS Grade AA butter price would apply not only to the butterfat formula for Class II, Class III, and Class IV but would apply to the advance butterfat formula used for computing the Class I butterfat price. The witness testified that by applying the same formula to all classes of butterfat the current relationship between the class prices would be maintained. The witness contended that there is no justification for changing the relationships between the class prices, particularly if the adjustment would widen the class price spreads or, in effect, increase the Class I and Class II differentials.

Witnesses for National Milk Producers Federation (NMPF) and several large cooperative associations testified in support of NMPF's proposal to reduce the calculated butterfat price by six cents, with the reduction applied to Class IV butterfat only. Under this proposal, the computation of the butterfat prices for other classes would not contain the six-cent adjustment. Several witnesses representing cooperative associations that process butter explained that butter manufacturers incur additional costs when procuring cream used for manufacturing butter as opposed to the cost of converting producer milk to butter. The witnesses explained that these additional costs include transportation, additional handling, and additional pasteurization. The witness for Land O'Lakes (LOL) testified that the additional costs amounted to 4.57 cents per pound of butterfat for transportation and .4 cents per pound for receiving, storing, and repasteurization. A witness for Agri-Mark stated that Agri-Mark's transportation costs are slightly less than LOL's, probably due to the proximity of the Agri-Mark plant to the sources of cream, but that the other additional costs are slightly higher than the LOL costs, at .5 cents per pound of butterfat.

The proponents of reducing the Class IV butterfat value also referred to the computation of the California Class 4a butterfat price, which involves a subtraction of 4.5 cents per pound from the CME Grade AA butter price to adjust for the costs of moving butter from the west coast to the Midwest.

Those parties who favored reducing the butter price before using the butterfat price formula to calculate any of the butterfat prices disagreed vehemently with the proposal to reduce only the Class IV butterfat price. They

argued that such a reduction would distort the relationship between the Class II and Class IV prices, resulting in a greatly-increased price for Class II butterfat in relation to Class IV butterfat.

Specifically, the projected increase in the Class II-Class IV butterfat price difference was cited as 6.7 cents per pound (from the current difference of .7 cents). These parties argued that butterfat values would most appropriately be reduced to the same degree in all classes.

The Class IV butterfat price should be computed by subtracting a make allowance of .115 dollars per pound from the monthly average NASS Grade AA butter price and dividing the result by .82. The Class II butterfat price should continue to be the Class IV butterfat price plus .007 cents, while the Class I butterfat price will be the higher of the advance Class III and advance Class IV butterfat prices plus the applicable Class I differential.

Contrary to the belief stated by some witnesses, whether qualified experts or not, the use of the Grade AA butter price for computing the butterfat price under Federal order reform was not an ''oversight.'' Trading of Grade A butter on the CME was ended (not by USDA, as implied in one brief, but by the CME) because the volume of Grade A butter traded was not great enough to warrant maintaining a trading venue. Although one brief argued that the Grade A butter price represents a minimum price, and that there is no need for concern that there will not be an available market for Grade A and Grade B butter, with the end of trading in Grade A butter on the CME there is no published (or any other known) source for obtaining a price for Grade A butter.

The use of the Grade AA butter price for establishing butterfat prices is appropriate since that is the only grade of butter that has significant enough trading volume to warrant a publicly-reported price. Grade AA butter prices are the only butter prices regularly available, and represent the vast majority (about 95 percent) of the butter sold. Although the ''multiples'' of the butter price apparently had not adjusted to the use of the Grade AA price during the first 4 months of experience under the revised orders, and probably should not be expected to adjust during the period in which this proceeding is under consideration, the marketplace should, in time, make the needed adjustments.

Various witnesses estimated that Grade A and Grade B butter combined make up 3–7 percent of the butter in the U.S. Although a witness noted that the Minnesota-Wisconsin (M–W) price for non-Grade A milk continued to be surveyed even after the percentage of milk eligible for the survey had fallen below a 5-percent level, it was widely recognized for some time that a pricing alternative to the M–W must be found because the M–W eventually would no longer provide a representative price for a large volume of unregulated milk. Similarly, with the decline of Grade A butter (and the unavailability of prices for that product), the only alternative available for determining price is Grade AA butter. A finding in the equivalent price determination that a Grade A butter price was ''essential'' to continued operation of the orders referred solely to the fact that the Grade A price was specified in all of the orders at that time, not that the butterfat value under Federal milk orders could never be based on any other price.

Making an adjustment to a clearly valid price series to approximate a price series that has been discontinued for several years due to insufficient volume for trading is inappropriate. In any case, it is impossible to determine what the current difference between these prices would be because there are no reports of the Grade A price available. The vast majority of butter made and sold in the U.S. is Grade AA, and that is the appropriate product to which to look for a value of butterfat used in butter. The 3-cent average difference between the CME and NASS butter prices makes up ⅔ of the 4.5-cent adjustment made by California in calculating the value of butterfat used in butter. An additional 6 cents deducted from the Class IV butterfat price calculated from the NASS price would much more than make up the remaining 1.5-cent difference. Also, the 4.5-cent California adjustment is made for the purpose of reflecting the cost of moving butter from California to Chicago. The butterfat price calculated under the Federal order program is not intended to apply to only one state. The NASS price is a nationwide survey, and likely includes a significant representation of California butter prices. If there are additional costs involved in making butter, they would more appropriately be included in the make allowance for butter.

Make Allowance (Butter). The make allowance factor in the Class IV butterfat formula should be derived from a combination of the manufacturing costs determined by the California Department of Food and Agriculture (CDFA) and by USDA's Rural Business Cooperative Service (RBCS), as they were in the final decision. The CDFA cost data is divided into two groups representing high cost and low cost butter plants, with the 4 plants in the high cost group manufacturing, on average, about the same average number of pounds of butter as the 7 plants in the RBCS study. Use of the data for the California high-cost group of butter plants is more appropriate than use of the weighted average cost for all of the CDFA plants because it is more likely that the high-cost plants, like the plants in the RBCS survey, serve a predominately balancing function.

When the RBCS data is adjusted to reflect the same packaging cost, general and administrative costs, and return on investment as the CDFA data for the high cost group, and a marketing allowance of $0.0015 is added to both sets of data, the weighted average of the two data sets is $0.115. This butter manufacturing allowance is very close to the current allowance of $0.114, and should continue to provide a representative level of the costs of making butter in plants that serve a balancing function.

The increased costs of making butter, not including transportation, cited by the proponents of reducing the Class IV butterfat price are expected to be included in this manufacturing allowance, which exceeds the low cost group in the CDFA survey by 3 cents per pound. The only class of use for which adjustments for transportation have regularly been included under Federal order regulation is Class I. Assuring that the order provides an allowance for moving milk for use in manufactured products would interfere with provisions designed to assure an adequate supply of milk for fluid use.

Yield (Butter). Although one witness suggested that the divisor in the butter price formula that reflects the butterfat content of butter be reconsidered, he did not indicate any number more appropriate than the .82 divisor used in the current formula. There was no other testimony in the record questioning the butter content factor. In fact, the only data in the record applicable to the issue was a CDFA report on butter and powder yields at California plants in 1996 that was included in an exhibit. This report shows a 1.2213 weighted average butter yield (1 pound of butterfat results in 1.2213 pounds of butter), which corresponds to the use of the .82 divisor.

The record does not support adoption of a Class IV butterfat price that is not reflected directly in the Class II butterfat price. There was testimony from several witnesses that the current Class IV-Class II price relationship is rational and appropriate, and an adjustment to the Class IV butterfat price that is not reflected in the Class II butterfat price would disrupt the current relationship.

In addition, it would seem reasonable that some of the extra costs claimed by butter manufacturers, such as transportation costs for supplemental cream supplies, butterfat standardization of outside cream sources, and additional pasteurization would be as applicable for Class II manufacturers of high-fat products using surplus cream as for butter makers. Accordingly, reduction of the Class IV butterfat price only is not considered appropriate.

Class IV Nonfat Solids Price. This decision maintains the use of the NASS survey price reported for nonfat dry milk and increases the make allowance for nonfat dry milk from 13.7 cents to 14 cents per pound of nonfat dry milk. In addition, the 1.02 divisor used in the current nonfat solids price formula to reflect the incorporation of dry buttermilk (with a lower product price and higher make allowance) in the nonfat solids price formula is changed to 1; or, in other words, eliminated.

Six proposals to change some part of the nonfat solids price formula were considered at the hearing. Three of the proposals dealt with the manufacturing allowance for nonfat dry milk (NFDM), with two of the proposals advocating use of the RBCS survey results and one proposal supporting an increase in the make allowance. The other three proposals supported changes in the yield factor of the nonfat solids price formula that would reflect greater powder yield from a pound of nonfat solids. Two of the proposals to change yield factors included using CME NFDM prices instead of the NASS survey. As discussed earlier in this decision, the product prices used in the component pricing formulas should continue to be obtained from the NASS survey.

Product Price (Nonfat dry milk). No proposals were considered that would have changed the product price used in the nonfat solids price formula, and the record contains no basis for making any change in this formula factor.

Make Allowance (Nonfat dry milk). At the time the hearing notice was issued, the most recent RBCS data were not available, and those costs were not specified in the proposals. By the time the hearing was held, however, the RBCS data had been released and were included in the information introduced at the hearing. National Milk Producers Federation (NMPF) supported continued use of a weighted average of the California and the RBCS manufacturing cost surveys, with inclusion of a marketing allowance and the California factor for return on investment. NMPF proposed that the NFDM make allowance be $0.140.

South East Dairy Farmers Association also proposed that the RBCS survey be used to determine a make allowance for NFDM, but did not propose that a marketing allowance be included. The necessity of including a marketing allowance is discussed earlier in this decision.

Associated Milk Producers, Inc. (AMPI), proposed that the NFDM manufacturing allowance be increased from $0.137 to $0.1563, a rate based on AMPI's cost of making NFDM at its own three plants in the upper Midwest over a 5-year period. The AMPI witness stated that in addition to a processing and packaging cost of $0.1254, the make allowance should include a marketing allowance of $0.0024 and return on investment of $0.026, for a total allowance of $0.1538, modified from the level proposed in the hearing notice. The witness testified that the three AMPI plants operate at approximately 80 percent of capacity.

On the basis of the data and testimony included in the hearing record, the manufacturing cost level that appears to be most appropriate for use in the pricing formula for nonfat solids is $0.14. This value is calculated by using a weighted average of the RBCS survey and the two less-cost California groups of plants, adding the California General and Administrative costs and Return on Investment expenses for those two groups to the RBCS numbers, and a $0.0015 marketing allowance to both sets of data. The basis for using the two lower-cost groups of California plants are that the mid-cost group is of a similar average size as the group included in the RBCS survey, and that the lowest-cost California group has a very similar total cost to the mid-cost group. These three groups of plants (the RBCS plants and the two California groups) are similar enough in size and cost to consider as fairly representative, and should encompass those plants that perform a market balancing function. The highest-cost California group should not be included, as its average cost is more than ten cents per pound of NFDM above the RBCS group or either of the other two California groups.

The AMPI cost numbers cannot be included in the weighted average since the number of pounds of NFDM associated with those costs is not available. When the AMPI marketing allowance and return on investment estimates are replaced with the more moderate numbers used in the make allowance calculation, the AMPI manufacturing costs do not differ much from the other two sources. This is true even of a comparison between the RBCS data and the AMPI data despite the wide discrepancy in the capacity utilization percentage estimates for the two data sets (80 percent for the AMPI plants versus less than 50 percent for the plants in the RBCS survey). Inclusion of the AMPI costs in the RBCS survey would have included a larger representation of NFDM manufactured outside California. However, the record indicates that a high percentage of the NFDM manufactured in the U.S. comes from California, and the proportion of cost data representing California in the manufacturing allowance is reasonable.

Yield (Nonfat solids). A considerable portion of the testimony dealing with the nonfat solids pricing formula pertained to the divisor of 1.02, which is intended to reflect the amount of nonfat solids in NFDM, with an adjustment for the small amount of buttermilk powder that is made in conjunction with the manufacture of butter and NFDM. Testimony by a number of witnesses asserted that the product price minus the make allowance should be either multiplied by a number greater than 1 (such as 1.02) or divided by a number smaller than 1 (such as .99 or .975) to reflect the fact that more than 1 pound of NFDM can be expected to be manufactured from 1 pound of nonfat solids due to the moisture content of NFDM.

Many of the hearing participants supported the current 1.02 divisor, and expressed understanding of the approach of adjusting the ''yield'' of NFDM to compensate for the fact that some of the powdered product made from Class IV milk is buttermilk powder (BMP). Although 1.03 to 1.05 pounds of NFDM generally can be obtained per pound of nonfat solids, the formula also recognizes a lower value and higher manufacturing cost for BMP.

Several witnesses correctly assessed an alternate solution to the dilemma of calculating a component price from two commodities with different prices and different make allowances as one requiring addition of dry buttermilk as another component price in the Federal milk order pricing system. As described by at least one witness, such an undertaking would require adding dry buttermilk to the NASS price survey, determining a separate make allowance, and calculating a yield factor. This procedure would be a burdensome undertaking for very little benefit, since dry buttermilk represents only about 5 percent of the dry products resulting from the manufacture of butter and nonfat dry milk. The issue that remains is how best to reflect the value of nonfat solids used in both NFDM and BMP in the same component pricing formula.

The IDFA witness testified that for the 19-month period beginning with September 1998, the central states' dry buttermilk average price had averaged $0.798 per pound, while the central states' ''mostly'' price for NFDM averaged $1.043. The Land O'Lakes witness similarly testified that the 1999 Northeast ''mostly'' price for NFDM averaged $1.0389, while the BMP price was $0.7686 per pound. On the basis of these numbers, it would appear that the price of BMP is roughly 75% that of NFDM. However, comparison of BMP and NFDM prices for the years of 1996 through 1999 and into 2000 reflects a more complex relationship between these prices than the hearing testimony would indicate. The BMP price as a percentage of the nonfat dry milk price (using Western prices) was 100.9% in 1996, 94.5% in 1997, 88 percent in 1998, and 71% in 1999. During the first third of 2000, BMP prices generally averaged less than 70% of NFDM prices. As the year 2000 has progressed, however, the percentage has increased, being at levels up to 100% in late July.

The witness representing Agri-Mark stated that Agri-Mark employees engaged in manufacturing operations had estimated that the costs of producing BMP range from 1 to 3 cents more per pound than those of producing NFDM. Given that the manufacturing costs estimated by the Agri-Mark witness for other products were somewhat higher than those supported by the bulk of the hearing record, it is reasonable to consider the extra cost of manufacturing BMP to be generally not more than 2 cents in excess of the cost of manufacturing NFDM. In addition, it is difficult to justify increasing the powder make allowance for all of the powdered product represented in the make allowance since the RBCS witness testified that manufacturing costs of BMP manufactured at the plants included in the RBCS survey are included in the powder costs reported by RBCS.

Testimony regarding actual yields of NFDM and BMP were provided by only one witness representing a manufacturing plant operator. The numbers provided, while not complete enough for an exact accounting of the ultimate disposition of the plant's receipts of producer milk, indicate strongly that the approximate loss of nonfat solids used in the manufacture of NFDM at the specific plant was 3 percent, with 16 percent lost in the manufacture of BMP; a weighted average loss of more than 3.5 percent. In comparison, data published by the State of California showed a weighted average loss of solids not fat of 2.13 percent in the manufacture of butter and powdered products.

The California data indicate a weighted average powder yield of 1.0252 pounds of NFDM and BMP from 1 pound of nonfat solids. One witness discounted this data by observing that the ''high'' California yield was reported as 1.0406, which would represent a higher-than-allowable moisture content. This number is undoubtedly influenced by the ''high'' reported BMP yield of .0749.

As noted above, the general impression conveyed by testimony in the hearing record, that BMP is worth considerably less than NFDM and that the cost of processing it is significantly greater than that of processing NFDM, is misleading. The average BMP price over the period 1996–July 2000 is approximately 87 percent of the NFDM price, and the cost of manufacturing BMP is, on the basis of the information available, no more than 2 cents in excess of the $0.14 recommended as the NFDM make allowance. These small adjustments to the product price and the make allowance used in the nonfat solids formula apply to little more than 5 percent of powder manufactured. It is apparent from the information contained in the record of this proceeding that the 1.02 factor, as a divisor, is excessive.

The following information from the hearing record was used to determine a multiplier or divisor for the total nonfat solids pricing formula that would result in a minimum price for nonfat solids while incorporating the data and testimony in the record about the manufacture of NFDM and BMP. To assure that the result represents a minimum price, the low or high areas of ranges of numbers related to the manufacture of these two products were used. The CDFA report on butter and powder yield in California plants in 1996 was used in making some of the calculations regarding this factor.

a. The price of BMP represents roughly 80 percent of the price of NFDM (80 percent is less than the average historical relationship of these prices over the past 5 years).

b. The cost of manufacturing BMP is not more than 2 cents greater than the make allowance for manufacturing NFDM.

c. Using a theoretical yield of 1.03 pounds of powder containing 3 percent moisture made from milk containing 8.62 percent nonfat solids would result in .054 pounds of BMP and .976 pounds of NFDM.

d. Adjusting the theoretical yield of 1.03 pounds to minimal yield of 1.01 pounds (the ''low'' yield in the CDFA report) and prorating the BMP and NFDM to 1.01 pounds instead of to 1.03 pounds, the amount of BMP manufactured from a pound of nonfat solids used in butter/powder is approximately .053 pounds. When the NFDM yield is prorated, the resulting minimum yield is .957 pounds.

Using a NFDM price of $1.03 per pound, a make allowance of $0.14 cents per pound of NFDM, and a divisor (or multiplier) of 1, the resulting calculation is: $1.03 − $0.14 = $0.89 per pound of nonfat solids. The same result is achieved through a more complicated calculation using both product prices and make allowances, as follows:

Buttermilk powder:

($1.03 × .80) − $0.16 = $0.664; $0.664 × .053 = $0.03519 + Nonfat dry milk:

$$\$1.03 - \$.014 = \$0.89;\ \ \$0.89 \times .957 = \frac{\$0.85173}{\$0.88692}$$

(Rounded to $0.89)

Therefore, no multiplier or divisor is necessary in this formula.

c. Class III Butterfat, Protein and Other Nonfat Solids Prices

In a change from the current orders, a Class III butterfat price is calculated from the value of butterfat in cheese rather than using the same butterfat price as is used in Class IV that is calculated from the value of butter. The Class III butterfat price, like the protein price, is calculated to represent the value of the component in the NASS cheddar cheese price. The only modification made to the specifications of the cheese price, currently a weighted average of the prices of cheese sold in 40-pound blocks and 500-pound barrels (with a 3-cent addition to the barrel price) is to adjust the price of 500-

pound barrels to 38 percent moisture instead of the 39 percent moisture price currently reported by NASS.

This decision would reduce the make allowance for cheese from 17.02 to 16.5 cents per pound. Using the Van Slyke cheese yield formula to represent the effects of butterfat and protein on cheese yield, the cheese price minus the make allowance is multiplied by 1.582 to calculate the Class III butterfat price, while the cheese price minus the make allowance is multiplied by 1.405 to calculate the protein price. The portion of the current protein price formula that adjusts the protein price to accommodate the differential value of butterfat in cheese, as opposed to butter, is eliminated. Both the protein and butterfat components of milk used to make cheese should track the cheese price much more closely than has been the case using the current Class III component pricing formulas.

The other nonfat solids price would continue to be calculated by subtracting the make allowance from the NASS-reported price for dry whey and dividing by .968. However, the make allowance is increased from 13.7 cents to 14 cents per pound of dry whey.

Class III Product Price (Cheese). Several proposals included in the hearing notice would, if adopted, change the NASS cheese price used in the Class III pricing formulas. One proposal would limit the cheese prices included to 40-pound blocks reported by the Chicago Mercantile Exchange (CME), while another would add 640-pound blocks to the prices surveyed by NASS for inclusion in the cheddar cheese price. A third proposal would replace the current 3-cent price adjustment between 500-pound barrel prices and 40-pound block prices to a value that reflects the actual differential industry cost of making 40-pound blocks over 500-pound barrels. Still another proposal would adjust 40-pound block cheese prices for moisture, as 500-pound barrel prices are adjusted.

As discussed above, CME commodity prices should not be used as the basis for calculating component prices. Eliminating 500-pound barrels, which represent approximately two-thirds of the cheese represented in the NASS survey, from calculation of the market value of cheddar cheese would reduce greatly the degree to which the current product prices represent U.S. cheddar cheese prices. The record of this hearing provides no support for relying solely on prices for 40-pound blocks to identify a market price of cheddar cheese.

The NASS weighted average cheese price should not include the value of 640-pound block cheese. Several parties testified that including 640's in the cheese price computation would improve the reliability of the average cheese price by adding a substantial quantity of cheese to the price survey. Witnesses' estimates of the percentage of U.S. cheddar cheese production represented by 640-pound blocks ranged from 20 to 27 percent. Witnesses testified that the increased volume would better reflect the true value of cheese and additionally would reduce the potential for price distorting manipulation by individual handlers.

Opponents to inclusion of the 640's in the cheese price computation explained that the vast majority of 640's are made on a custom basis to customers' specifications, and therefore are not sufficiently uniform to have a standard identity.

Without a standard identity for the product, standardized pricing cannot be developed. At the beginning of the NASS survey, price data for 640-pound blocks initially was collected, but was discontinued due to lack of volume and too few participants to allow disclosure of data. Even earlier (1995–96), the former National Cheese Exchange attempted to include trading in 640-pound blocks, but discontinued doing so because of lack of interest. Several of the witnesses who testified in favor of including 640-pound blocks in the NASS survey also indicated that the 640-pound blocks manufactured by their organizations are used internally. Thus, the prices represented by these products would not be eligible for inclusion in the NASS survey.

Several witnesses at the hearing and comments contained in post-hearing briefs advocated reducing the three-cent adjustment that is added to the barrel price for computing the weighted average cheese price to one cent or eliminating it altogether. The witnesses argued that since the barrel cheese price is adjusted to 39 percent moisture and block cheese is approximately 38 percent moisture, at least 2 cents of the observed difference in price between 40-pound blocks and 500-pound barrels is due to moisture and has nothing to do with actual differences in costs. In fact, they argued that there is no difference in packaging costs between block and barrel cheese.

The witness for DFA, a cooperative that manufactures cheese packaged in both 40-pound blocks and 500-pound barrels, testified that three cents is an acceptable and reasonable spread between blocks and barrels and that there is no compelling reason to change the three-cent addition to the barrel price. The witness for LOL testified that the three cents is an appropriate difference between blocks and barrels and that adding three cents to the barrel price when computing the weighted cheese price is an appropriate adjustment. A brief filed on behalf of DFA and the Association of Dairy Cooperative in the Northeast argued that the record supports a conclusion that the 3-cent adjustment of the barrel price is attributable to volume utility and cost differences in packaging and handling.

The National Cheese Institute, which proposed reducing or eliminating the 3-cent adjustment, argued that the adjustment should include only the actual cost differences involved in manufacturing and packaging the two sizes of cheese. Although a number of witnesses representing cheese manufacturers testified in favor of reducing or eliminating the adjustment, including one whose employer makes both sizes of cheddar, none of them addressed the actual cost differences of packaging and manufacturing 40-pound blocks and 500-pound barrels. Instead, the only testimony that was offered involved attributing a 2-cent difference to the moisture-adjusted value of the two sizes of cheese packages.

If the difference between the block and barrel prices were due to the difference in moisture, the difference between the prices should widen as the cheese price increases since the moisture adjustment is based on the price and moisture of the cheese. An analysis of historical cheese prices indicates that the difference between the block cheese and barrel cheese prices does not change with changes in price level. In fact, three of the largest differences between the block and barrel prices occurred at approximately the 40-month NASS weighted average monthly prices.

The record contains no basis for concluding that the actual cost of manufacturing and packaging the two sizes of cheese is not the historical 3-cent price spread. In fact, during the period September 1998 through June 2000 the difference between the block and barrel prices has been 4.4 cents per pound. The record of this proceeding does not support reducing or eliminating the 3-cent addition to the barrel cheese price.

An expert witness, and several other witnesses, testified that the moisture content of the cheese used for determining the NASS cheese prices and the moisture content used in the Van Slyke cheese yield formula used for computing the ''yield'' coefficients in the protein formula should be the same. The witnesses explained that failure to align the formula and the moisture

content represented by the cheese price survey would result in over or understating the formula coefficients.

The expert witness explained that the barrel cheese price is reported at 39 percent moisture after being adjusted from the actual moisture, while the block cheese price is reported at an unknown moisture level. The only testimony dealing with the actual moisture level of block cheese indicates that it averages about 38 percent.

The coefficients originally used for determining the Class III protein price and the Class III butterfat price, and used in the formulas in this decision, were derived from using the Van Slyke cheese yield formula at 38 percent moisture. Therefore, it is appropriate to use cheese prices that reflect cheese containing 38 percent moisture. The current practice of using the 40-pound block cheese price unadjusted for moisture and the 500–lb barrel price adjusted for moisture should be continued, but with the barrel price adjusted to 38 percent moisture instead of 39.

The hearing record provides no basis for altering the composition of cheese prices surveyed for use in the Class III pricing formulas, or for changing the calculation of the NASS weighted average cheese price, other than the moisture adjustment to 38 percent for 500-pound barrels.

Several witnesses testified that types of cheeses other than cheddar should be included in the NASS price survey as a more comprehensive basis for identifying a cheese price, although such a proposal was not included in the hearing notice. The cheddar cheese included in the NASS survey meets certain standard criteria that makes prices for the reported cheese sales comparable. If the survey included other descriptions of cheddar and other types of cheese, such as mozzarella, it would not be possible to consider the reported price as representative of the value of any particular product. Further, the manufacturing costs surveyed are, to a great extent, limited to the costs of processing cheddar cheese.

Class III Make Allowance (Cheese). Several proposals to adjust the manufacturing allowance for cheese were included in the hearing notice and considered at the hearing. The NMPF witness testified that the organization had determined that the most appropriate cheese make allowance would be a weighted average of the updated RBCS and CDFA surveys, with addition of a marketing allowance, and modified the Federation's proposal accordingly, supporting adoption of a cheese make allowance of $0.1536. Several witnesses representing cooperative associations supported the NMPF $0.1536 proposal and the inclusion of cost factors for a marketing allowance and return on investment. One witness testified that the make allowance should be based on data from actual plant operations through the surveys conducted by RBCS and CDFA and testimony from individual plant operators; that it should include California data, as California plants represent a large proportion of cheese manufacture; and that it should be generous enough to assure adequate plant capacity for continued manufacture of cheese.

The witness representing NCI testified that the cheese make allowance should be no less that $0.1687, the weighted average of the NCI-sponsored and CDFA surveys with the addition of a marketing cost of $0.0011. He stated that such an allowance would represent the production of 24 cheese plants and 53% of U.S. cheese. Several cheese manufacturer representatives supported use of the NCI-supported make allowance, stressing the importance of adoption of an allowance that covers *all* of the costs of manufacturing cheese.

A witness representing Farmers Union and the American Farm Bureau witness both supported adoption of a make allowance of $0.1521, as a weighted average of RBCS and CDFA data, and a witness for National Farmers Organization supported a make allowance of $0.141 composed of the RBCS cost with the addition of a marketing allowance and return on investment.

The make allowance used for computing the Class III protein and butterfat prices, $.165, was determined by combining the CDFA plant survey with the RBCS survey. As was pointed out by several witnesses at the hearing, several cost factors that are necessary to maintain the viability of processing plants are not represented in one or both of the RBCS and the CDFA studies. These cost factors include marketing costs, return on investment, and general and administrative expenses. A discussion of these expenses is included earlier in this decision. Neither the CDFA nor the RBCS survey included a marketing cost, so the $0.0015 marketing allowance was added to both studies. In addition, the CDFA return on investment cost of $0.0103 and general and administrative expense of $0.0190 was added to the RBCS study, which included neither factor. The resulting adjusted costs for each survey are $0.1708 for RBCS and $0.15996 for CDFA. A weighted average of the two studies was computed using the respective adjusted make allowances and the pounds of cheese reported in each study; 466,396,548 for the CDFA study and 633,142,812 for the RBCS study, to arrive at the Class III price make allowance of $0.165.

Class III Butterfat Price (and effect of butterfat on cheese yield). Testimony at the hearing and analysis of the relationship between the current cheese, butterfat and protein prices revealed that the current Class III pricing formulas cause inequities in producer payments based on the relationship between producers' butterfat and protein tests. The inequities were attributed to the use of the 1.28 factor used in the portion of the protein price formula that is designed to incorporate the butterfat value of milk used in cheese that is not already accounted for by the Class III and IV butterfat price. Further analysis also revealed that there is very little relationship between the current butterfat price and the cheese price or between the current protein price and the cheese price.

Under the current system, market distortions occur due to using the Class IV butterfat price, calculated from the value of butterfat in butter, to also represent the value of butterfat in cheese, (Class III), and trying to incorporate the difference in value in the protein price. As a result, instances have occurred when the protein price declines while, at the same time, the cheese price is increasing. This outcome is completely contrary to the concept of pricing components on the basis of the value of the products in which they are used. The same inverse price scenario has affected the butterfat price, with occurrences in which the Class III butterfat price increases because the butter price has increased while the cheese market has been declining. For example, in April of 2000 the protein price was $1.7399, based on a cheese price of $1.1011, while in May the cheese price increased slightly to $1.1022 but the protein price declined approximately $0.18 to $1.5514. The decline in the protein price was directly attributable to the increase in the butter price and the resulting increase in the butterfat price.

The reasons for using the same butterfat price in Class III and Class IV under Federal order reform have been outweighed by the outcome of that decision. The pricing concept of reflecting the value of a manufactured product in the prices for the milk components that are instrumental in the yield of that product require that the Class III protein and butterfat prices be tied more directly to their value in the cheese that is produced using those

components. Therefore, it is necessary to separate the value of butterfat used in the manufacture of cheese from the value of that component in butter. The pricing system contained in this decision will eliminate the distorted relationships between the Class III butterfat and protein prices and the cheese price.

Calculating the Class III butterfat price on the basis of the effect of butterfat on cheese yield, as described in the Van Slyke cheese yield formula, rather than from the butter price makes alternative uses based on price differences clearly visible. The Class III butterfat price formula should be:

(NASS weighted average cheese price − .165) ×1.582. Adoption of more logical relationships between the value of butterfat and its various uses will allow butterfat to move to the use with best return.

Protein price (and effect of protein on cheese yield). The method of computing the protein price described in this decision results in a protein price that, like the recommended Class III butterfat price, has a 100 percent correlation with the cheese market. In addition, the recommended formula eliminates many of the problems discussed at the hearing concerning the current formula. The protein price formula will be modified by removing the butterfat portion of the formula. Removal of the butterfat pricing factor from the protein price formula eliminates the contentious issue of the 1.28 butterfat-to-protein ratio.

As contained in this decision, the protein price will be: (NASS weighted average cheese price − .165) ×1.405.

Class III—Other Nonfat Solids Price (Dry Whey)

This decision continues to calculate the price of the nonfat solids other than protein in milk used to make cheese by subtracting a manufacturing allowance from the NASS dry whey price and dividing the result by the content of these ''other nonfat solids'' in dry whey. No change is made, or was proposed, in the dry whey product price or divisor in the formula. The manufacturing allowance for dry whey is increased from 13.7 cents to 14 cents per pound of dry whey to reflect the increase in the NFDM make allowance. The decision would snub the other nonfat solids price at zero rather than allowing it to become a negative factor in determining payments to producers.

The hearing included several proposals that would change the dry whey or other solids price formula by changing the make allowance. Although the hearing notice included a proposal to use the CME average dry whey price, the proponent withdrew support for the proposal when it became apparent that the CME has no cash exchange market for dry whey. The NASS survey that currently is being used to identify commodity prices has included price data on dry whey since September 1998. There were no proposals to change the 0.968 yield factor in the other solids price formula. The 0.968 factor reflects the solids content of dry whey, given a 3.2 percent moisture content.

Make Allowance (Dry Whey). Since the most recent CDFA and RBCS cost surveys did not include costs for drying whey, there is no information from those two studies to use for computing the dry whey make allowance. A witness from the National Milk Producers' Federation suggested using the nonfat dry milk manufacturing cost allowance for dry whey since both products involve similar processing equipment, and then adding $0.01 per pound to reflect the additional energy and higher equipment costs incurred in drying whey. Since the proposed make allowance for nonfat dry milk is $0.140, this procedure would result in a dry whey make allowance of $0.150.

Dairy Farmers of America (DFA) proposed a dry whey make allowance of $0.1478 per pound based on costs at its plant at Smithfield, Utah. The plant is a cheddar block plant running throughout the year that condenses and dries whey from the cheese manufactured in this Smithfield plant only. The DFA costs include both direct and indirect costs, and return on investment and marketing cost data.

A witness from WSDPTA testified that there is no reason to change the other solids price computation from the current formula, and that it is a necessary component of the cheese pricing formula. He noted that the use of dry whey as a commodity is correct and that the 0.968 factor in the pricing formula reflects 96.8 pounds of solids in 100 pounds of dry whey.

Most witnesses who testified about the cost of drying whey expressed the belief that drying whey costs more than drying nonfat dry milk. Two cooperative association witnesses testified that their organizations have determined that the returns from whey powder with the current make allowance would not cover the costs associated with building and operating whey powder plants.

IDFA presented the results of the survey, discussed earlier in this decision, contracted for by NCI. The IDFA witness testified that the survey showed a dry whey make allowance of at least $0.1592. The IDFA witness testified that using the nonfat dry milk make allowance significantly understates the manufacturing cost of dry whey due to the relatively higher percentage of water in liquid whey compared to skim milk, and the additional crystallization process required.

A witness representing Leprino Foods testified on the differences in the manufacturing processes for dry whey and nonfat dry milk that result in higher costs to produce whey powder. The witness concluded that the cost of making dry whey is $0.02559 above the cost of drying nonfat dry milk.

The brief submitted by Leprino argued that the additional costs of processing whey powder over those of processing nonfat dry milk should include additional staffing, cleaning, and maintenance associated with the additional equipment for whey product.

A witness from Kraft agreed that the dry whey manufacturing costs are about 2.6 cents per pound greater than the nonfat dry milk manufacturing costs. Although Kraft described its Tulare plant as large and efficient, it also represents a recent capital investment, meaning that depreciation costs are likely higher than average.

Although a number of witnesses testified that the cost of drying whey is greater than that of drying nonfat milk, the record does not provide clear support for any particular differential over the NFDM make allowance. The differential costs of manufacturing whey powder over those of nonfat dry milk do not provide close enough agreement with the NCI-sponsored survey to use either means of determining a make allowance with any confidence. Neither of the witnesses who testified that the extra costs of drying whey are 2.6 cents greater than the costs of drying nonfat dry milk testified about the total costs of the operations they were describing. Therefore, the make allowance used to calculate the other solids price should continue to be the same as that used in the total nonfat solids component price formula. The other solids price will be computed by subtracting the make allowance of $0.14 from the NASS dry whey survey price and dividing the result by .968.

The other solids price should be snubbed at zero. This means that if the NASS dry whey price minus the make allowance results in a negative number, the other solids price would become zero. A brief filed by Michigan Milk Producers Association (MMPA) supported the inclusion of such a ''snubber'' concept for the whey price. The brief cited testimony in which the DFA witness referred to the difficulty of explaining to producers a negative component price.

The value of other solids used in the Class III milk price should add to the value of milk and not be allowed to subtract from the milk value. Snubbing the other solids price to zero will prevent it from negatively affecting the value of other Class III components or having a negative impact on the producer price differential.

d. Effects of Changes to Class III and Class IV Price Formulas

The changes to the Class III and Class IV component price formulas discussed above would result not only in changes to the respective component prices, but to the resulting Class III and Class IV skim milk and hundredweight milk prices at 3.5 percent butterfat. With the exception of the 38-percent moisture adjustment to barrel cheese prices, all of the differences calculated between the current prices and the proposed prices are due to changes in the formulas' make allowances and/or the ''yield'' coefficients.

It is important to note that these calculated class price differences are based on historical product price data, and not on product prices that will occur in the future. The price differences calculated in this portion of the decision cannot be used to calculate or estimate changes in revenue that would have occurred or may occur in the future, as changing intersections of supply and demand for each product result in different prices.

All of the comparisons that follow are calculated based on the NASS weighted average commodity prices from September 1998 through June 2000. NASS weighted average commodity prices for this time period were available, and no estimates of the relevant commodity prices need to be made. Although this time period is relatively short, a number of interesting price relationships occurred in the data series. For instance during this period the cheese market went from a record high of $1.8643 per pound to $1.1011 per pound, which is just over the $1.10 per pound support price for 40-pound blocks of cheddar. During this same 22-month period the NASS weighted average nonfat dry milk price showed almost no movement, ranging from $1.0864 per pound to $1.0071 per pound, approximately two cents below the support price. In fact, the nonfat dry milk price has stayed below the support price since March 1999. Unlike the cheese and nonfat dry milk market, the butter price has not traded anywhere near the butter support price of $0.65, trading in a range from $2.6726 per pound to a low of $0.8820 per pound. It is important to keep in mind that since all milk is priced on the basis of butterfat and skim or nonfat components under Federal orders, focusing on the calculated hundredweight prices at 3.5 percent butterfat that are announced for comparison purposes can result in misleading conclusions.

Changing the Class IV butterfat price make allowance from $0.114 to $0.115 results in a calculated average decline in the Class IV butterfat price of $0.0012 over the 22-month period studied. The two changes to the Class IV nonfat solids formula, increasing the make allowance from $0.137 to $0.140 and eliminating the 1.02 divisor, would result in a net increase of $0.0144 per pound in the Class IV nonfat solids price in the absence of any other changes. Since the Class II prices are to continue to be computed on the basis of the Class IV formulas plus the Class II differential of $0.70, changes to the Class II prices will be the same as the changes to the Class IV prices. The calculated Class IV skim milk price would increase by an average of $0.13 per hundredweight. The calculated 3.5 percent Class IV milk price would increase by an average of $0.12 per hundredweight, reflecting the net difference between the $0.13 increase in the skim milk price and the very small decline in the Class IV butterfat price.

As a result of the 38-percent moisture adjustment to barrel cheese prices, the NASS weighted average cheese price used for computing the Class III protein and Class III butterfat price would be calculated to have increased by $0.014 per pound over the 22-month period September 1998 thru June 2000.

The changes to the formulas used to compute the Class III component prices would result in fairly significant changes to the component prices, as might be expected. For instance, since the current Class III butterfat price is based on the butter market and the proposed butterfat price is based on the cheese market, the proposed Class III butterfat price would average $0.4651 per pound above the current Class III butterfat price over the 22-month period if cheese and butter prices had been the same. However, the component prices are expected to track the underlying commodity prices to a much greater extent than they did previously.

The change in the protein formula over the past 22 months would result in a calculated protein price averaging approximately 53 cents below the current protein price. At the same time, the increase from $0.137 to $0.14 in the dry whey make allowance for calculating the other solids price results in a calculated decline in the other solids price of $0.003 over the 22-month period. The combination of the reductions in both the protein price and the other solids price would have resulted in an average $1.65 decrease in the Class III skim milk price over the 22-month period if cheese and dry whey prices were unchanged.

The calculation of the Class III price at 3.5 percent butterfat, based on the formulas contained in this decision, would have averaged $0.02 per hundredweight above the 3.5 percent Class III price based on the current Class III formulas.

4. Class Price Relationships

The price relationships between classes established in the Final rule under the Federal order reform process should be maintained. One proposal heard in this proceeding would have reduced the Class IV butterfat price without affecting the computation of other butterfat or product prices. That proposal is addressed specifically in the section of this decision dealing with Class IV Butterfat price.

Several witnesses testified as to what the class price relationships should be if changes were made to any of the Class III or Class IV component price formulas. The current pricing system uses the same formulas for computing the advance component prices used to compute the Class I skim milk and butterfat prices and Class II skim milk price as are used to calculate the Class III and Class IV component prices. The witness for IDFA and several other parties stated that any changes to the Class III and Class IV formulas should also apply to the advance price formulas used for computing the Class I and Class II prices. The witness explained that failure to use the same formulas between the related classes of use would result in a direct impact on the Class I and Class II differentials which was clearly not the intent of Congress when Congress instructed the Secretary to conduct a rulemaking proceeding concerning the Class III and Class IV price formulas.

A witness for Hershey Foods pointed out that the Secretary went to great lengths to justify the seventy-cent Class II differential above the Class IV price. The witness said that there is no justification or new evidence for changing the current price relationship that exists between the manufactured products (butter and nonfat dry milk) and the Class II price if the Class IV formulas were revised as suggested in several proposals. The witness stated that such changes in price relationships clearly were not the intent of Congress. A brief filed on behalf of IDFA stated

that the correct price relationship between NFDM and Class II is 70 cents, and that the record provides no basis for changing that relationship. Actually, as explained in the final decision on Federal order reform, 70 cents represents the correct price relationship between milk used to make dry milk powder and milk used in Class II, as nearly as can be determined from the information available.

A proposal by two parties that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices was supported in testimony by one of the parties, who argued that any increases in the Class I price mover should be balanced with reductions in Class I differentials. The witness stated that the proponents want to be sure that Class I prices are not further decoupled from Class III and Class IV pricing formulas, or that Class I prices are not artificially inflated.

Neither the price relationships established in the final decision between milk used in Class III or Class IV and milk used in Classes I and II should be changed. To the extent that there may be differences in the Class III or Class IV prices between the current prices and those adopted in this decision as a result of adjustments to the component pricing formulas, those changes should be reflected in the Class I and Class II prices. Any reevaluation of the formulas used to price the components used in manufactured products should be carried through to the class prices that are based on those component prices. A change in the computation of the nonfat solids price, for instance, is intended to better reflect the value of those solids in dry milk products. If the new nonfat solids price formula results in an increase in the Class IV price, the record provides no basis for changing the difference in the value of the milk used in those solids between Class IV and Class II use. Similarly, the availability of milk for use in Class I is related to the higher of the alternative manufacturing values for that milk. The current relationships should be maintained.

5. Class I Price Mover

Although not included in the hearing notice, a proposal was made by Family Dairies, USA, to change the Class I price mover from the higher of the Class III and Class IV prices to a weighted average of the two. The witness for Family Dairies testified that the results of the current regulation are disturbing and unanticipated with the unexpected strength of the Class IV price relative to Class III. He complained that 10 percent of production under Federal orders (milk used to make nonfat dry milk) has been driving the (Class I) price of 40% of the milk. As a result, he testified, milk production for fluid purposes is encouraged in markets with high Class I differentials and relatively high Class I use at a time when marketing conditions (an oversupply of milk) should have the opposite effect. As fluid-oriented markets are receiving increased prices relative to markets in which cheese is the dominant use, he complained, inequities in blend prices between markets are increasing.

A group representing upper Midwest producer interests filed a brief that described the recent movement of milk from the Upper Midwest pool onto the Central and Mideast marketwide pools as disorderly marketing caused by increases of Class I prices in these higher-Class I use markets. This shift in the pooling of milk from the upper Midwest to higher-valued markets has been a long-sought outcome on the part of upper Midwest producer groups. It is difficult to understand why it is now seen as a manifestation of disorderly marketing.

A brief filed by another group representing fluid milk handlers suggested that USDA should give careful consideration to the proposal to use a weighted average of the Class III and Class IV prices to move Class I prices. Any means of reducing Class I prices to handlers should meet with the approval of these processors, regardless of the economic merits of the proposal.

In several briefs it was argued that the Regulatory Impact Analysis (RIA) published with the final decision on Federal order reform stated that the price formulas adopted therein were expected to generate a sufficient quantity of milk, and that both the adoption of Class I pricing option IA and use of the higher of the Class III and IV prices as the price mover have worked to enhance Class I price levels. It should be noted that use of the higher of the Class III and IV prices was included in that decision and considered in the RIA, not added later by Congress, as was the change in the Class I pricing surface.

Another brief argued that since the 1960's the dairy industry has used a Class I mover tied to a market-clearing price represented by a weighted average of milk used in butter, cheese and powder. The price referred to, first the Minnesota-Wisconsin price series, and later that price adjusted by a weighted average of current product prices for the products mentioned, was specific to the upper Midwest area and included very little powder, as that area manufactures a higher percentage of cheese, relative to NFDM, than the rest of the U.S. The current pricing system is much more representative of national supply and demand for manufactured dairy products than either of the versions of the former Class I mover.

As explained in the final decision on Federal order reform, the higher of the Class III or Class IV prices are used to move the Class I price to assure that fluid plants will be better able to attract milk away from manufacturing uses. Use of the weighted average of the two prices when there is a significant difference between them would provide no assurance that milk would be available as needed for fluid uses, and would be more likely to result in Class price inversions (where the Class I price falls below one or more of the manufacturing class prices). In addition, use of a weighted average Class I price mover would increase the occurrence of the blend price falling below the Class III or IV price in markets with low Class I utilization.

Aside from the fact that the proposal to use a weighted average of the Class III and Class IV prices as the Class I mover was not noticed for consideration in this proceeding, it should be rejected on the basis of its lack of merit.

6. Miscellaneous and Conforming Changes

a. Advanced Class I Butterfat Price

Because of changes in the Class III and Class IV pricing formulas made in this decision, especially the adoption of different butterfat prices for the two classes, a conforming change should be made to the procedure for calculating the Class I butterfat and hundredweight prices. The advanced butterfat price used for pricing Class I butterfat would be the butterfat price used in calculating the higher of the advanced Class III or Class IV prices on a 3.5 percent butterfat basis.

b. Classification

As a conforming change to the development of different prices for butterfat used in Class III and Class IV products, the classification of anhydrous milkfat, butteroil, and plastic cream should be changed from Class III to Class IV. The record contains a plethora of testimony about the use of these products as substitutes for butterfat, and therefore for butter, in manufactured products. In a pricing plan where butterfat used in Class III products has the same value as butterfat used in Class IV products, a difference between the classification of these products, which have a very high

butterfat content, and butter should not cause any market dislocation. However, as extensively pointed out in testimony, continuing to classify these products as Class III when the Class III butterfat price is changed to reflect the value of butterfat in cheese, rather than its value in butter, would place the manufacturers of these products at a significant competitive disadvantage to manufacturers of butter.

c. Distribution of Butterfat Value to Producers

There were several responses to the issue of whether the butterfat price paid to producers should be the result of pooling butterfat prices from the different classes or continue to reflect the value of butterfat in Class III. A witness from Northwest Dairy Association testified that being able to line up the Class III price to plants with the component value calculation for producers is helpful, especially with regard to forward pricing. A brief filed on behalf of DFA and ADCNE supported continued use of the Class III butterfat price as the producer butterfat price. According to the brief, changes in direct pricing to the producer are not prudent at this time, and any change between the Class III and Class IV butterfat price should be settled through the producer price differential mechanism in the market order pools. The brief continued that the producer price differential is a blending of various debits and credits in the pooling process and the additional equalizing of any butterfat pricing adjustments through this procedure currently makes the most sense.

The post-hearing brief filed by National All-Jersey urged that USDA retain the current practice of using Class III milk component values to price producer component values. The brief noted that this scenario makes it easier to use accepted hedging tools, such as Class III futures contracts, and helps simplify pricing for producers. The brief further stated that the current procedure maintains the same producer butterfat price in all Federal orders with multiple component pricing.

Although hearing participants supported continuing to use the same butterfat price for Class III milk and producer payments, the butterfat values of the 4 classes should be pooled in calculating the value of butterfat received from producers. Producers should see the classified use value of the butterfat portion of their milk reflected in the value they receive for that component of their milk. Pooling the butterfat values would accomplish this principle. In addition, potential large differences between the Class III and Class IV/II butterfat prices as a result of the Class III component prices calculated from the formulas in this decision would be likely to result in significant distortions in the effect of those differences on the producer price differential. It is possible that pool calculations in some markets would result in a negative producer price differential if the producer butterfat price is not changed to represent a blend of the values of butterfat in the four classes of use.

Pooling butterfat values will also have the effect of providing more consistency among the orders. Currently, the four orders that do not have component pricing pool the class use butterfat values and return a weighted average butterfat price to producers. In the component pricing orders, butterfat values are not pooled and producers receive the Class III butterfat value. Pooling butterfat values to producers will result in producers sharing in the class use value of butterfat.

d. Inclusion of Class I Other Source Butterfat in Producer Butterfat Price Computation

In pooling the class butterfat values to determine butterfat prices to producers, the value associated with the occasional classification of other source milk as Class I should be included. This change should be made so that the value of all of the butterfat in the pool will be reflected in the producer butterfat price.

In addition, a change in the component pricing orders should be made in the paragraph in which the ''Handler's value of milk'' is calculated by replacing the differential value of other source milk allocated to Class I with the Class I value of that milk. These orders currently subtract the Class III value of such milk from its Class I value in the ''Handler's value of milk computation,'' include that differential value in the ''Computation of producer price differential,'' and credit the handler for the other source milk that was classified in Class I at the producer price differential in ''Payments to the producer-settlement fund.''

With the adoption of a producer butterfat price that can be expected to differ from the Class III butterfat price, however, it is more appropriate to include in the ''Handler's value of milk'' the entire Class I value of other source milk classified as Class I, deduct the portion of its producer value that does not include the producer price differential during the computation of the producer price differential, and credit the handler for the milk's value at producer prices in the calculation of ''Payments to the producer-settlement fund.''

7. Issue of Whether To Omit a Recommended Decision

The statute requiring that this proceeding be held to reconsider the Class III and Class IV pricing formulas also requires that a final decision be published by December 1, 2000, with any amendments to the orders to be effective January 1, 2001.

A number of hearing participants indicated understanding of the difficulty in issuing a recommended decision, allowing for comments and exceptions on the decision, and then issuing a final decision by the deadline of December 1, 2000. However, the hearing record reflects unanimity among those addressing the issue that the industry should be afforded the opportunity to comment on a decision before its content results in a final rule.

Therefore, USDA is issuing this Tentative Final Decision, which will require producer approval before the included proposed amendments become effective in an Interim Final Rule, with a subsequent Final Decision and Final Rule to follow. This procedure will allow industry comment on the content of this decision, while allowing USDA to comply with the statutorily-imposed timetable.

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 each of the aforesaid 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.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders;

(a) The interim marketing agreements and the orders, 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 aforesaid marketing areas, and the minimum prices specified in the interim marketing agreements and the orders, 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 interim marketing agreements and the orders, 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, marketing agreements upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

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

It is hereby ordered, That this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Referendum Order To Determine Producer Approval; Determination of Representative Periods; and Designation of Referendum Agents

It is hereby directed that referenda be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended and as hereby proposed to be amended, regulating the handling of milk in the Northeast and Mideast marketing areas is approved or favored by producers, as defined under each of those orders, 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 areas.

The representative period for the conduct of such referenda is hereby determined to be May 2000 for the Northeast order and September 2000 for the Mideast order.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Periods for All Other Orders

May 2000 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas are approved or favored by producers, as defined under the terms of each of those orders 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 areas.

September 2000 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest, Central, Pacific Northwest, Southwest, Arizona-Las Vegas and Western marketing areas are approved or favored by producers, as defined under the terms of each of those orders 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 areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

Dated: November 29, 2000.

Enrique E. Figueroa,

Deputy Under Secretary, Marketing and Regulatory Programs.

Interim Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

This interim 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 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) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. 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 orders 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 areas; and the minimum prices specified in the orders 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; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674, 7253, P.L. 106–113, 115 Stat. 1501.

PART 1000–GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.40 is amended by removing and reserving paragraph

(c)(1)(ii) and revising paragraph (d)(1)(i) to read as follows:

§ 1000.40 Classes of Utilization.

* * * * *

(c) * * *

(1) * * *

(ii) [Reserved]

* * * * *

(d) *Class IV milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Butter, plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

2. Section 1000.50 is amended by revising the last sentence of the introductory text and paragraphs (a), (b), (c), (g), (h), (j), (l), (m), (n), (o), (p)(1), and (q)(3) and adding paragraph (q)(4) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the Class IV butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the advanced Class III or advanced Class IV skim milk price used in the calculation of the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced Class III or advanced Class IV butterfat price used in the calculation of the higher of the advanced Class III or advanced Class IV prices calculated in paragraph (q)(4) of this section.

* * * * *

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the Class IV butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the Class III butterfat price.

* * * * *

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the Class IV butterfat price.

* * * * *

(l) *Class III and Class IV butterfat prices.*

(1) The Class III butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(i) Compute a weighted average of the following prices:

(A) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(B) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(ii) Subtract 16.5 cents from the price computed pursuant to paragraph (l)(1)(i) of this section and multiply the result by 1.582;

(2) *The Class IV butterfat price* per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA butter survey price reported by the Department for the month less 11.5 cents, with the result divided by 0.82.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 14 cents.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed by subtracting 16.5 cents from the price computed pursuant to paragraph (l)(1)(i) of this section and multiplying the result by 1.405;

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 14 cents, with the result divided by 0.968. The other solids price shall not be less than zero.

(p) * * *

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (l)(1)(i) of this section and round to the 5th decimal place;

* * * * *

(q) * * *

(3) Calculate the advanced Class III and advanced Class IV butterfat prices as follows:

(i) The advanced Class III butterfat price shall be calculated by subtracting 16.5 cents per pound from a weighted average of the 2 most recent U.S. average NASS survey prices for 40-lb.block cheese and for 500-pound barrel cheddar cheese (at 38 percent moisture) plus 3 cents announced before the 24th day of the month, with the result multiplied by 1.582;

(ii) The advanced Class IV butterfat price shall be calculated by subtracting 11.5 cents from a weighted average of the 2 most recent U.S. average NASS AA butter survey prices announced before the 24th day of the month, with the result divided by 0.82.

(4) Calculate the advanced Class III and advanced Class IV prices as follows:

(i) The advanced Class III price shall be the sum of the value calculated pursuant to paragraph (q)(1) of this section multiplied by .965 plus the value calculated pursuant to paragraph (q)(3)(i) of this section multiplied by 3.5, rounded to the nearest cent.

(ii) The advanced Class IV price shall be the sum of the value calculated pursuant to paragraph (q)(2) of this section multiplied by .965 plus the value calculated pursuant to paragraph (q)(3)(ii) of this section multiplied by 3.5, rounded to the nearest cent.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

1. Section 1001.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1001.61, is revised to read as follows:

§ 1001.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1001.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.*

(1) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1001.60(a) through (g) and § 1001.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1001.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

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

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1001.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1001.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1001.61(b).

4. Section 1001.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1001.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1001.75 applicable at the location of the plant from which received.

5. Section 1001.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(vi) to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received by the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(vi) Multiply the pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

1. Section 1005.60 is amended by revising paragraph (e) to read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1005.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1005.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other

source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraghs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

1. Section 1006.60 is amended by revising paragraph (e) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1006.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1006.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1006.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

1. Section 1007.60 is amended by revising paragraph (e) to read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1007.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1007.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1007.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1030.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1030.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1030.60(a) through (h) and § 1030.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1030.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

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

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1030.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1030.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1030.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1030.61(b).

4. Section 1030.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1030.75 applicable at the location of the plant from which received.

5. Section 1030.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1032.61 is revised to read as follows:

§ 1032.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1032.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1032.60(a) through (h) and § 1032.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1032.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

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

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1032.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1032.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1032.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1032.61(b).

4. Section 1032.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1032.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1032.75 applicable at the location of the plant from which received.

5. Section 1032.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of producer butterfat price and producer price differential.

For each month the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight for producer milk receipts. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1033.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1033.60(a) through (h) and § 1033.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1033.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

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

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1033.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1033.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1033.61(b).

4. Section 1033.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1033.71 Payments to the producer—settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1033.75 applicable at the location of the plant from which received.

5. Section 1033.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1033.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1124.61, including the section heading, is revised to read as follows:

§ 1124.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1124.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Producer price differential. (1) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1124.60(a) through (g) and § 1124.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1124.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

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

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1124.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1124.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1124.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1124.61(b).

4. Section 1124.71 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1124.75 applicable at the location of the plant from which received.

5. Section 1124.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

1. Section 1126.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(i) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1126.61, is revised to read as follows:

§ 1126.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1126.60(i) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1126.60(a) through (h) and § 1126.60(j) by the protein price, other solids price, and producer butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1126.60(i) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

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

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1126.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1126.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(h) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1126.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1126.61(b).

4. Section 1126.71 is amended by revising paragraphs (b)(2) and (4) to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1126.75 applicable at the location of the plant from which received.

5. Section 1126.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk by the respective butterfat prices for the month;

* * * * *

PART 1131—MILK IN THE ARIZONA-LAS VEGAS MARKETING AREA

1. Section 1131.60 is amended by revising paragraph (e) to read as follows:

§ 1131.60 Handler's value of milk.

* * * * *

(e) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1131.61 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1131.61 Computation of uniform prices.

* * * * *

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1131.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) * * *

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

1. Section 1135.60 is amended by revising paragraphs (c)(3), (d)(2) and (h) to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the Class III butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the Class IV butterfat price.

* * * * *

(h) Multiply the Class I skim milk and Class I butterfat prices 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 § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of 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.

* * * * *

2. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of producer butterfat price and producer price differential.

For each month, the market administrator shall compute a producer butterfat price per pound of butterfat and a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in these computations, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer butterfat price and the producer price differential in the following manner:

(a) *Producer butterfat price.* The producer butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1135.60(h) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) *Producer price differential.* (1) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(2) Subtract the total of the values obtained:

(i) By multiplying the total pounds of protein, other solids, and butterfat contained in each handler's producer milk for which an obligation was computed pursuant to § 1135.60(a) through (g) and § 1135.60(i) by the protein price, other solids price, and producer butterfat price, respectively;

(ii) By multiplying each handler's pounds of skim milk and butterfat for which a value is computed pursuant to § 1135.60(h) by the Class III skim milk price and the producer butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

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

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The result shall be known as the *producer price differential* for the month.

3. Section 1135.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1135.62 Announcement of producer prices.

* * * * *

(e) The producer butterfat price;

* * * * *

(g) The statistical uniform price computed by adding the following values:

(1) The Class III skim milk price computed in § 1000.50(i) multiplied by .965;

(2) The producer butterfat price computed in § 1135.61(a) multiplied by 3.5; and

(3) The producer price differential computed in § 1135.61(b).

* * * * *

4. Section 1135.71 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 1135.71 Payments to the producer—settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and producer butterfat prices respectively; and

(3) An amount obtained by multiplying the hundredweight, the pounds of skim milk, and the pounds of butterfat for which a value was computed pursuant to § 1135.60(h) by the producer price differential, the Class III skim milk price, and the producer butterfat price, respectively, as adjusted pursuant to § 1135.75 applicable at the location of the plant from which received.

* * * * *

5. Section 1135.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the producer butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the respective butterfat prices for the month;

* * * * *

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 §§_____ [1] to _____, all inclusive, of the order regulating the handling of milk in the (_____ Name of order _____) marketing area (7 CFR PART _____ [2]) which is annexed hereto; and

II. The following provisions: § _____ [3] 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 _____ [4], _____ hundredweight of milk covered by this marketing agreement.

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

§ _____ [3] 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

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

[FR Doc. 00–30816 Filed 12–1–00; 9:19 am]

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