Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1030, 1065, 1068, 1076 and 1079

[Docket Nos. AO–361–A31, etc.; DA–92–27]

Milk in the Chicago Regional and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR Part	Marketing area	AO Nos.
1030 ..	Chicago Regional	AO–361–A31
1065 ..	Nebraska-Western Iowa.	AO–86–A50
1068 ..	Upper Midwest	AO–178–A48
1076 ..	Eastern South Dakota.	AO–260–A32
1079 ..	Iowa	AO–295–A44

SUMMARY: This final decision adopts changes in the Federal milk marketing orders for five north central marketing areas based on industry proposals considered at a public hearing. The decision adopts a plan for pricing milk on the basis of its protein and other nonfat solids, as well as butterfat, components. The proposed plan includes adjustments per hundredweight based on the somatic cell count of producer milk used in Class II and Class III, and on payments to producers of all pooled milk.

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SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

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

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

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

Prior documents in this proceeding;

Notice of Hearing: Issued December 22, 1993; published January 4, 1994 (59 FR 260).

Extension of Time for Filing Briefs: Issued April 22, 1994; published April 29, 1994 (59 FR 22138).

Recommended Decision: Issued October 25, 1994; published November 2, 1994 (59 FR 54952).

Extension of Time for Filing Exceptions: December 2, 1994; published December 9, 1994 (59 FR 63733).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Chicago Regional and certain other 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 (7 CFR Part 900), at Bloomington, Minnesota, on January 25–27, 1994. Notice of such hearing was issued on December 22, 1993, and published January 4, 1994 (59 FR 260).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on October 25, 1994, issued a recommended decision containing notice of the opportunity to file written exceptions thereto.

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

1. Under Issue 1, the last sentence in paragraph 1 is revised, the second sentence in paragraph 23 is revised, a paragraph is added after paragraph 34, and two paragraphs are added after paragraph 40.

2. Two paragraphs are added at the end of Issue 2.

3. Under Issue 3, one paragraph is added after paragraph 5, the first sentence of paragraph 8 is revised, and a paragraph is added at the end of Issue 3.

4. Under Issue 3a, a phrase is modified in paragraph 5, four paragraphs are added after paragraph 25, and two paragraphs are added at the end of Issue 3a.

5. Under Issue 3b, paragraph 1 is modified, one paragraph is added after paragraph 7, one paragraph is added after paragraph 8, and one paragraph is added at the end of Issue 3b.

6. Under Issue 3c, a sentence is added at the end of paragraph 3.

7. Under Issue 4, paragraph 1 is modified, paragraph 26 is modified and expanded into three paragraphs, the last four sentences of paragraph 34 and all of paragraphs 35 and 36 are deleted, and 34 paragraphs are added at the end of Issue 4.

8. Under Issue 5, paragraphs 1 and 4 are revised, paragraph 5 is replaced by two new paragraphs, two paragraphs are added after paragraph 12, paragraph 16 is revised, and two paragraphs are added at the end of Issue 5.

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

1. Adoption of multiple component pricing.
2. Orders to be included.
3. Components and component prices.
a. Protein.
b. Other nonfat solids.
c. Butterfat.
d. Miscellaneous issues.
4. Somatic cell adjustment.
5. Conforming changes.

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. *Adoption of multiple component pricing.* Proposals to incorporate multiple component pricing in the Chicago Regional (Order 30), Nebraska-Western Iowa (Order 65), Upper Midwest (Order 68), Eastern South Dakota (Order 76) and Iowa (Order 79) Federal milk marketing orders (the five orders) should be adopted, with some modifications. The pricing plan generally would be patterned after the multiple component pricing plan proposed by National All-Jersey, Inc. and other dairy organizations. Producers would be paid on the basis of the pounds of butterfat, protein and other nonfat solids (solids-not-fat other than protein) in their milk, and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total butterfat, the protein and other nonfat solids used in Classes II and III, skim milk used in Class I, and the hundredweight of total product used in Classes I and II. In a modification from the recommended decision, a somatic cell adjustment, per hundredweight, would apply to the value of milk used in Classes II and III, but not in Class I, and to the value of all producer milk. The change was necessary since the record evidence as discussed later did not support including Class I.

At the present time, milk received by handlers under the five orders is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the orders for each class of use. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight of milk testing 3.5 percent butterfat to be paid to producers for the milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound on the Chicago Mercantile Exchange, as reported for the month by the U.S. Department of Agriculture, by 0.138 and subtracting the Minnesota-Wisconsin price (the M–W price) at test, also as reported by the U.S. Department of Agriculture, multiplied by .0028.

The multiple component pricing (MCP) plan was originally proposed for Orders 30, 68 and 79 by National All-Jersey, Inc. (NAJ), and other dairy organizations. In addition, Land O'Lakes, Inc., proposed that the multiple component plan be considered for Orders 65 and 76. Most other proposals considered at the hearing were modifications of the NAJ proposal and are discussed below.

The first NAJ witness stated that the current milk pricing system used in the five orders does not meet current marketing needs and should be replaced with a multiple component pricing system. Much of the general NAJ testimony in favor of multiple component pricing was later reiterated by witnesses expert in the field of economics and dairy chemistry testifying for NAJ, and a representative for Land O'Lakes. Also testifying in favor of the NAJ proposal were two dairy farmer members of the cooperative association Swiss Valley Farms Company, a representative of the Brown Swiss Cattle Breeders Association of U.S.A., Inc., and a representative of Tri-State Milk Cooperative. It was indicated in testimony that Alto Dairy Cooperative also supported the NAJ proposal.

The representative for the proponents said the intent of their proposal was to:

1. Use the M–W price as the base;
2. Pay all producers on four factors—pounds of butterfat, pounds of protein, pounds of other solids, and each producer's share of the fluid differential on a per hundredweight basis;
3. Leave Class I handler obligations on a skim-butterfat basis;
4. Determine Class II and III handlers' obligations on the basis of pounds of butterfat, protein, and other solids; and
5. Change only the order provisions needed to implement the NAJ proposal.

The NAJ witness said that there were five reasons for replacing the current milk pricing system with a multiple component pricing system. The first reason, according to the NAJ witness, is that the current skim-butterfat pricing system does not give dairy farmers economic incentives to produce milk high in nonfat solids, especially protein. He stated that under the current pricing system a pound of water receives the same price as a pound of protein or other solids, yet it is these solids that give milk its functional and nutritional value.

The second reason given by the NAJ witness for adopting MCP was that over a period of years much of the value of milk has shifted from butterfat to the skim portion of milk. The proponent's witness said that in 1960, butterfat represented 77% of the value of the M–W price, and skim represented 23%. By 1993, he testified, these values were reversed, with butterfat representing only 23% of the value of the M–W, while the skim portion of the milk represented 77%.

According to the NAJ witness, the shift in value from butterfat to skim was partially caused by the USDA decision to decrease the support price for butter and increase the support price for nonfat dry milk. The support price for butter declined from $1.53 per pound in 1981 to 65¢ per pound in 1993, with most of the decrease occurring since 1989. Nonfat dry milk purchase prices under the support program increased from 72.75¢ per pound in 1988 to $1.034 per pound in 1993. In addition, the witness said, the butterfat differential under Federal orders has been dropping since the mid-1980s because of a decline in the market price for butter. This drop was accelerated by a change in the method of computing the butterfat differential, implemented in 1990, that had the impact of reducing the butterfat differential even more.

The third reason the witness gave for implementing multiple component pricing was the shift in types of dairy products consumers are purchasing. According to the witness, some of the decline in butterfat value relative to skim value has been caused by a shift in consumption from whole milk to lowfat and skim fluid milk products. The witness presented data to show that from 1970 to 1991, national fluid milk sales of lowfat and skim milk increased 232%, while sales of whole milk declined 50%. In addition, he stated, consumption of lowfat manufactured products is growing faster than

consumption of relatively high-fat manufactured products.

The NAJ witness discussed equity in Federal orders as the fourth reason for implementing multiple component pricing. He said that the current skim-butterfat pricing system is equitable for neither producers nor handlers since it does not properly recognize the value of protein, especially in manufactured products such as cheese. The witness provided examples to show how a producer with high protein milk may currently receive the same Federal order minimum price as a producer with low protein milk. Similarly, a cheese maker who purchases high protein milk could have a cost advantage at minimum order prices over a cheese maker who purchases low protein milk.

The fifth reason presented by the NAJ witness was the existence of a number of voluntary multiple component pricing plans in the areas covered by the five orders. Data were presented to show that nearly all producers in the five orders currently are eligible to be paid under one of these voluntary multiple component pricing plans. The witness stated that many of the plans have inadequacies which contribute to disorderly marketing. According to the witness, these inadequacies would be addressed by adopting the NAJ proposal.

A witness from Land O'Lakes, Inc. (LOL), testified in support of the adoption of MCP in the five orders in general, and the NAJ proposal specifically. He discussed how the NAJ multiple component pricing proposal would better reflect the market value of nutrients in the milk to the farmer. He stated that the proposed system, compared with the current system, would essentially eliminate the value of milk used in manufacturing that is currently associated with water which, he said, has very little market value in dairy products. The witness said that MCP would affect the cost of milk to LOL as a handler in that it will come closer to equalizing the cost of milk relative to the value of the products derived from the milk.

The LOL witness also described four major weaknesses in the existing voluntary MCP plans. The first weakness, he said, was that the current plans emphasize component test instead of component yield. He said that the price paid to each producer should be tied more directly to the value of the products that can be produced from the producer's milk.

The second weakness described by the LOL witness is that many existing plans do not provide for deductions for milk with low component levels. This, he said, indicates that the plans recognize the higher value of milk with more pounds of components, but do not recognize that milk with fewer pounds of components is worth less. He said that competitive, rather than economic, factors are the reason deductions for low component levels generally do not exist, as many producers do not like to see deductions on their milk checks.

According to the LOL witness, an inequitable feature of the voluntary MCP plans is that they generally pay no component premiums when the somatic cell count of the milk is above a fixed level, resulting in high test producers losing their component premium because of high somatic cells, while low test producers with high somatic cell counts lose nothing.

The fourth weakness described by the witness is that some existing MCP plans pay premiums for protein, while others pay premiums for solids-not-fat. He said that most producers in Wisconsin receive premiums based on protein, while most producers in Minnesota, Iowa, Nebraska and South Dakota receive premiums based on solids-not-fat. The witness claimed that the variety of payment plans currently in existence do a poor job of transmitting market signals to the producers, are not economically consistent, and lead to confusion among farmers. He said that the NAJ proposal would address the deficiencies in the current situation.

Most participants at the hearing advocated the introduction of MCP for payments to producers and for milk delivered to handlers for Class II and Class III use in the five orders. There was no support for pricing Class I milk on other than the current butterfat and skim basis.

In addition to NAJ and LOL, adoption of some form of multiple component pricing in the five orders was supported by Central Milk Producers Cooperative (CMPC), the Trade Association of Proprietary Plants (TAPP), Farmers Union Milk Marketing Cooperative (FUMMC), National Farmers Organization (NFO), Kraft General Foods (Kraft), Associated Milk Producers, Inc., North Central Region (AMPI-North Central), Wisconsin Cheese Makers Association (WCMA), Dean Foods, and National Cheese Institute (NCI).

The CMPC witnesses strongly supported the need for implementing multiple component pricing in the five orders and proposed a plan very similar to that of NAJ. The fundamental difference between the two plans is that the CMPC proposal would result in lower protein prices than the NAJ proposal. The appropriate level of the protein price is discussed under Issue 3a below.

The CMPC proposal was supported in testimony and in a post-hearing brief by NFO. A witness for WCMA testified in support of the CMPC proposal for multiple component pricing. A witness for Dean Foods testified in support of the concept of MCP, and in response to a question about which proposal he favored, he expressed support for the CMPC proposal. AMPI North Central Region submitted a brief in support of the CMPC proposal for multiple component pricing.

A witness for NCI testified in support of the CMPC multiple component pricing proposal with one primary modification. The NCI proposal would calculate a ''residual fluid price'' instead of another solids price. This proposal is discussed further under Issue 3b below in this decision. Kraft testified and submitted a brief in support of the NCI proposal for multiple component pricing.

A witness for the Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) testified in support of the TAPP proposal, a variation of the CMPC proposal that would price both butterfat and protein on a differential basis, rather than on a per-pound basis.

The five north central Federal milk orders included in this proceeding should be amended to include multiple component pricing. On the basis of the record of this proceeding, multiple component pricing would entail pricing milk on the basis of the pounds of butterfat, protein and other nonfat solids contained in the milk, with a somatic cell adjustment to the hundredweight of milk used in Classes II and III and to the producer price differential paid to producers. The record indicates that a large percentage of the producers pooled under these orders are already eligible for or receive some form of multiple component pricing and that many of these component pricing plans use protein as a pricing component.

The record also shows that the diverse component pricing programs that currently exist promote disorderly and inefficient marketing conditions in the procurement of milk supplies by competing handlers. The different programs establish non-uniform bases of payments to producers. The adoption of multiple component pricing will allow the Orders to recognize the additional value of milk with a higher-than-average solids content.

In the five orders included in this proceeding, the vast majority of the milk pooled is utilized in manufactured products. The total solids in the milk

used for manufacturing are the primary determinants of product yield. In addition, it is the solids in fluid milk that give it its nutritional value and taste. In both types of products, the current pricing system used in the five orders does not properly recognize the value of nonfat milk solids or encourage producers to increase the quantity of nonfat milk solids in the milk they produce.

As a result of the shift in value in recent years from the butterfat portion of milk to the skim portion, most of the value of milk is determined on a volume basis without any consideration of the value of the skim components. Adoption of the multiple component pricing plan recommended in this decision will enable the market to reflect the value of the skim components in milk to producers.

In addition to butterfat, protein is clearly the most appropriate component of milk on which payment should be based. Most of the milk pooled under these five orders is used for manufacturing, and 86% of the milk used in manufacturing is used to produce cheese. Because protein is a main determinant of cheese yield, and it is cheese that determines the profitability for most of the dairy industry in the 5-market area, the milk pricing system should recognize the value of the protein component of milk as it is used in the manufacture of cheese.

Record evidence clearly shows that protein has a higher demand than other components of milk because of its functional, nutritional and economic value in the marketplace. The functional characteristics of protein allow it to form the matrix in the production of cheese and yogurt. Protein is also important to the air formation in the manufacture of certain products and provides some required nutrients in the human diet. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Additionally, handlers receiving milk that results in greater volumes of finished products such as cheese and cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished products deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield. Thus, sending an economic signal to dairy farmers will encourage them to maximize the production of those components which have the greatest demand in the marketplace.

According to analysis of the record, proponents are correct that attribution of all of the skim value of the M-W price to protein would result in an overstatement of the value of protein used in cheese and most other uses. In order to maintain fairly uniform prices between orders for milk used in manufactured products, it is necessary to assign the residual value of the M-W price minus the butterfat and protein values to either other nonfat solids or a fluid carrier price. The discussion of this residual component may be found in Issue 3b below.

A witness for the Galloway Company testified in support of TAPP and Galloway's own proposals to exclude sweetened condensed milk, ice cream and ice cream mix from pricing under a multiple component pricing system. The witness stated that such products should continue to be priced under the current pricing system.

The Galloway witness said that some Class II manufactured products, together with other products such as sour cream, whipping cream, half and half, eggnog, yogurt, nonfat dry milk and butter, are not affected in yield by the protein content of the milk from which the products are manufactured. Instead, according to the witness, it is total skim solids that affect the yield of these products. Accordingly, the witness stated, it would not be equitable to price such products under a multiple component pricing system which prices protein at a level higher than the remaining skim solids in the milk. The witness argued that these products should be left out of any MCP plan adopted.

The Galloway witness testified, and post-hearing briefs filed on behalf of Anderson-Erickson (A-E) and Galloway asserted, that yields are affected by the level of total skim solids rather than protein, making the pricing of protein irrelevant for Class II pricing. The Galloway witness testified that there have been months in which the monthly average protein level and other nonfat solids level of milk moved in opposite directions. In addition, the A-E and Galloway briefs asserted that MCP would significantly increase the cost of Class II milk, which would put them at an even greater disadvantage than currently with respect to products made from nonfat dry milk priced at the Class III-A price.

The Galloway witness stated that the primary product manufactured by the Galloway Company is sweetened condensed milk. According to the witness, this product competes on a national basis with other manufacturers who do not have to procure their milk under Federal orders with MCP provisions. The witness stated that it would be unfair to force his organization to procure milk under a set of regulations that differ from those regulating his competitors.

A portion of the TAPP proposal would require a classification change for sweetened condensed milk from Class II to Class III. Although the Galloway witness expressed strong concern over the impact of multiple component pricing on his company, the effect of the classification of sweetened condensed milk on the Galloway company is not part of the MCP issue. Reclassification of this product is a separate issue that was discussed thoroughly at a previous hearing, and in the decision issued as a result of that hearing (58 FR 27774). No new evidence was presented at this hearing that would justify reclassifying sweetened condensed milk.

Comments filed in response to the recommended decision on behalf of A-E excepted to the application of component pricing to certain Class II products. A-E's opposition was based on two points: (1) The value of the protein in certain Class II products cannot be recovered in the marketplace, and (2) there was no evidence at the hearing to justify an increase in the Class II price. Dean Foods' comments expressed concern that MCP might jeopardize Class II product standing in the marketplace, but didn't oppose or support inclusion of MCP for Class II.

Milk used to produce sweetened condensed milk, or any other Class II product, should not be exempted from multiple component pricing. The MCP plan recommended for adoption will cover all Class II and Class III products.

Testimony at the hearing indicated that there are essentially two groups of Class II products that differ with respect to the impact of multiple component pricing on the handlers that make these products. The first group of Class II products are those in which there generally seemed to be agreement in the hearing record that yields are greatly affected by the level of protein in the milk. These products include the various cottage cheeses and other similar soft, high-moisture cheeses. The handlers that make these products benefit directly from higher levels of protein in milk and should be accountable to the pool for this added benefit.

The second group of Class II products are those where there was some disagreement in the record about the effect of protein on the yield. These products include ice cream and frozen

desserts and mixes, fluid creams, sour creams, yogurt, sweetened condensed milk and others. Considerable debate took place on whether it was appropriate to include these products in a multiple component pricing system.

Occurrences of average protein level and other nonfat solids level of milk moving in opposite directions appear to be exceptions rather than the rule. Evidence presented in ''Analysis of Component Levels and Somatic Cell Counts in Individual Herd Milk at the Farm Level, 1992, Upper Midwest Marketing Area'' indicates that about 60% of the variation in solids-not-fat is caused by variation in protein, and that higher protein levels are positively correlated with higher solids-not-fat levels. Data presented in this and other documents show that the level of other solids in milk tends to be relatively constant with, generally, small month-to-month variation. Thus, when a handler purchases milk with higher than average protein levels, he will also, generally, be purchasing milk with higher than average levels of solids-not-fat.

In addition, the sum of the value of the protein and other solids under this recommended pricing plan equals the value of the total nonfat solids. The value of total nonfat solids, therefore, is a weighted average of the quantity and price of the protein and the quantity and price of the other nonfat solids contained in the milk. Analysis based on the average tests of the five markets shows that under the recommended pricing plan, the value of total nonfat solids would range from approximately $.002 per pound below the current value to approximately $.008 per pound above the current value.

This estimated price difference is certainly not the significant increase that is claimed in the briefs. In hearing testimony, the Galloway witness stated that an analysis of the effect of the CMPC proposal on the Galloway Company showed a nine-cent increase per hundredweight in the cost of Galloway's milk only when the CMPC somatic cell adjustment was included. Without the somatic cell adjustment, the analysis showed that the cost of milk to Galloway would be reduced under the CMPC multiple component pricing plan.

As explained above, protein is not the only component in skim milk. Skim milk consists of protein and other solids which are combined in this pricing plan to determine the value of skim milk. As was described earlier, the total value of the nonfat solids under MCP ranges from approximately $.002 per pound below to $.008 per pound above the current value of nonfat solids in the skim portion of milk.

Contrary to claims in the A–E exception, the Class II price does not change under the MCP pricing plan. The value of milk used in Class II may change, depending on the level of solids contained in the milk. However, the MCP value could be lower or higher than the current skim value, not just higher as assumed by A–E.

It is appropriate to include all Class II products in the multiple component pricing system being proposed here. All Class II products derive benefit from butterfat, protein and/or other solids in the milk. The benefit may be in enhanced yield, such as protein for cottage cheese, or a combination of protein and other solids (i.e. the solids-not-fat in the milk) in many of the other Class II products. Or, the benefit may be in some other area. For example, the NAJ dairy chemist witness testified about the importance of protein in the functionality of many of these products, such as in ice cream, whipping cream, and yogurt. Some testimony even went so far as to discuss the importance of protein in fluid milk, in terms of the nutrient content and the mineral carrying content of the milk. However, since there was no substantial support for including Class I milk in the multiple component pricing system being proposed here, only Class II and Class III products will be priced on multiple components.

2. *Orders to be included.* A proposal to incorporate the multiple component pricing plan adopted in this proceeding in the Nebraska-Western Iowa and Eastern South Dakota Federal milk orders as well as in the Chicago Regional, Iowa, and Upper Midwest orders should be adopted.

The witness for Land O'Lakes (LOL), proponent of the proposal, listed a number of reasons for including the multiple component pricing plan in the Nebraska-Western Iowa and Eastern South Dakota orders as well as in the orders proposed by NAJ. The witness explained that all five orders are similar in that their predominant use of milk is for manufacturing Class III products. He testified that the primary organizations that supply the Nebraska-Western Iowa and Eastern South Dakota markets also are major participants in one or more of the Chicago Regional, Iowa, and Upper Midwest order marketing areas. The witness stated that inclusion of the Nebraska-Western Iowa and Eastern South Dakota orders in the multiple component pricing plan would allow those organizations that have producers and market milk in multiple orders to standardize their payrolls and billings, thus maintaining uniformity and reducing confusion among producers and handlers.

The decision to include additional orders in this decision should not be made entirely on the basis of convenience to the parties marketing milk on the various orders. The decision is based on whether inclusion of the two orders would tend to effectuate the policy of the Agricultural Marketing Agreement Act. Certainly, including the Nebraska-Western Iowa and Eastern South Dakota orders in this decision will contribute to orderly marketing.

The data supplied by the market administrators' offices describing the milksheds of the various orders shows a considerable overlap of milksheds. For example, many South Dakota counties have milk pooled on three of the five orders during the same month. In the absence of uniform pricing provisions between the five orders, disorderly marketing could occur, particularly when orders have overlapping milksheds, if one order were pricing milk on a skim and butterfat basis while another order was pricing milk on the basis of its components. If a producer's milk tests high for nonfat components but is pooled under an order that prices milk on a skim-butterfat basis, the producer would attempt to maximize returns by changing the market under which his milk is pooled to benefit from his high component levels. The opposite situation would occur if the milk of a producer testing below average for nonfat components is pooled under an order with MCP provisions. Such a producer would maximize returns by changing the order under which his milk is pooled to one with skim-butterfat pricing. This shuffling of producers in the same geographic area because of nonuniform pricing provisions would not constitute orderly marketing.

Since the inclusion of the Nebraska-Western Iowa and Eastern South Dakota orders in the multiple component pricing decision would tend to reduce disorderly marketing in the region, benefit handlers by allowing a standardized payroll, and there was no opposition to their inclusion, multiple component pricing should be adopted for these two orders as well as the other three.

In response to the recommended decision, NCI and TAPP filed comments advocating a uniform national MCP plan. NCI stated that a uniform MCP plan should be considered for all markets with a significant quantity of manufacturing milk and production of a significant quantity of cheese. TAPP's comments argued that emphasizing the

value of protein in cheese is inappropriate if a national uniform multiple component pricing plan is contemplated.

The multiple component pricing plans considered thus far for inclusion in Federal milk orders have been developed and proposed by the industry participants in the affected marketing areas. The plans have tended to be modified from one proceeding to the next, with ideas about the most appropriate provisions evolving as time goes on, and to reflect individual marketing conditions. The evidence in the record of this proceeding supports the pricing plan adopted in this decision for these 5 markets. Implementation of a multiple component pricing plan for these 5 markets should not be delayed because of the desire of some market participants for a national plan.

3. *Components and component prices*. Unlike the multiple component pricing plans adopted previously in other Federal milk marketing orders, this decision recommends the adoption of a pricing plan for milk based on three components rather than two. Under the five orders involved in this decision, milk should be priced on the basis of its protein, other nonfat solids, and butterfat components.

The protein price contained in this decision is based on the value of protein in the manufacture of cheese, as determined by cheese market prices, and is not a residual of the Minnesota-Wisconsin (M–W) price minus butterfat value as is the case in other MCP plans. The butterfat price would be based on the butter market, as it is in other multiple component pricing systems. ''Other nonfat solids'' will be priced as a residual of the M–W price minus protein value and butterfat value. The butterfat, protein, and other nonfat solids prices shall be expressed in dollars per pound carried to the fourth decimal place. In addition, payments to each producer should reflect the value of participation in the marketwide pools on a hundredweight basis.

As in other orders for which multiple component pricing has been adopted, this decision maintains the relationship of the value of producer milk to the M–W price. If the sum of the butterfat value and the protein value is greater than the M–W price, a situation which would result in a negative other nonfat solids price, the protein price will be adjusted such that the other nonfat solids price will be zero.

In testimony and brief a witness for the Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) presented a plan that would pay producers for protein above a neutral zone of 3.00% to 3.29%, and provide deductions for protein levels below the neutral zone. The level of adjustment would be tied to the price of barrel cheddar cheese on the National Cheese Exchange, and would be used to adjust pay prices to producers in a manner similar to the current butterfat differential.

The witness said that milk traditionally has been purchased on a per hundredweight basis, with differential adjustments for levels of components. According to the witness, not only are producers usually paid on a per hundredweight basis, but milk is measured on a per hundredweight basis for purposes of plant accounting, payments between plants and to haulers, and by breed associations and DHIA with adjustments for percentages of components where necessary. The witness also claimed that using differential pricing would be revenue neutral.

Comments filed by TAPP in response to the recommended decision argued that the recommended pricing provisions would result in excessive price deviations between current and projected producer returns, and that a wide neutral zone of no adjustments for protein content should be included. TAPP's comments, and those of the North Dakota Milk Producers Association, reiterated the arguments for continuing to price milk on a hundredweight basis, with differentials for adjusting its value for protein and butterfat content. TAPP further predicted that pricing components on a per-pound basis would lead to discontinued use of the M–W price, as handlers of Grade B milk also would shift their payments to producers to a component basis.

The TAPP/FUMMC testimony and comments are correct that switching payments to producers from a per hundredweight system to one of pounds of components, as adopted in this decision, is not a minor change. Some expense will be incurred by handlers and producers in adapting to the new system. However, the benefits to the industry in the affected areas of adopting a uniform multiple component pricing system outweigh the one-time costs of its adoption. The implication that everyone connected with the dairy industry must adopt this system is not correct. Pounds of milk must still be accounted for under the multiple component pricing system. For example, nothing in this decision would prevent a handler from continuing to pay haulers on a hundredweight basis. No testimony at the hearing from witnesses that have producers pooled under Federal orders that have already adopted multiple component pricing indicated that moving to a pricing system that prices milk components by the pound was an onerous burden. The transcript does reveal disagreement with the level of the protein price under some Federal orders with multiple component pricing, but little dissatisfaction with the system itself, nor complaints about the difficulty of switching to a component pricing system.

As to the argument that pricing protein and butterfat on the basis of price differentials would be revenue neutral, the multiple component pricing system recommended for adoption is designed neither to enhance nor reduce total producer returns. The only changes in the total pool value that may occur because of the recommended changes would result from differences in the protein and other nonfat solids content between milk pooled under the orders included in this proceeding and the milk included in the Minnesota-Wisconsin survey. In addition, some redistribution of the dollars involved in each pool can be expected between producers, and between handlers.

The proposal by TAPP and FUMMC, and the exceptions filed by TAPP and the North Dakota Milk Producers Association, to leave butterfat on a differential pricing basis and to price protein on a differential basis with a neutral range are not included in this decision. To continue to pay producers for butterfat and to add payment for protein on the ''traditional'' differential system would confuse and frustrate producers in the understanding of their milk checks. Continued use of differentials would perpetuate the volume-based pricing system with a high value on water, and would fail to give producers a true price signal of what the marketplace wants.

If, as predicted by TAPP's comments, pricing components on a per-pound basis leads to discontinued use of the M–W price, such a shift ought to be gradual enough to allow time for a new pricing structure to be developed for milk used in manufactured products. As noted in the recent M–W replacement decision, the recently-amended procedure for determining the M–W price is not considered to be a long-term solution.

The use of differentials in pricing milk components is not widely understood. There is no valid reason to continue an outmoded and confusing pricing system in valuing milk components. Pricing components on a

per-pound basis will allow producers to see clearly what components have the most value, a result which plainly fits the goal of encouraging producers to produce those components which have the highest value in the marketplace. Per-pound pricing also makes clear to producers that it is the pounds of components that result in payment, rather than the percentages of those components in milk. Producers would be better able to look at the cost of producing pounds of components, and compare those costs with possible returns. Application of a neutral zone would discourage producers from increasing protein production marginally unless such an increase would raise the protein level above the neutral range.

North Dakota Milk Producers Association objected that the reliability of testing and questions about the variance of components on a day-to-day basis would make the recommended pricing plan inaccurate. There is nothing in the record of this proceeding that provides a basis for concern about the ability of the market administrators and handlers in these marketing areas to test milk for the components that will be priced under this decision. In fact, the record indicates that producers currently are being paid on the basis of the component content of their milk.

a. *Protein*. The protein price for milk pooled under the five north central Federal milk orders should be calculated by multiplying the monthly average of 40-pound block cheese prices on the Green Bay Cheese Exchange by 1.32, without including a value for whey protein.

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

A proposal submitted and supported by National All-Jersey, Inc. (NAJ), and supported by a number of cooperative associations and other dairy organizations, would calculate the protein price in two parts: (1) Multiply the National Cheese Exchange monthly average 40-pound block cheese price by 1.32, and (2) add the monthly average whey protein concentrate price multiplied by .735. The sum of these two values would equal the protein price.

The NAJ proponent witness explained that one of the objectives of the NAJ proposal was to establish a protein price that was high enough to give producers an incentive to produce protein. He added that a second objective was to determine the protein price from market forces rather than as a residual value, as is used in other Federal orders. The witness explained that the 1.32 factor used in the NAJ proposal comes from the modified Van Slyke cheese yield formula that is commonly used by the industry. The 1.32 factor represents the pounds of 38-percent moisture Cheddar cheese obtained from one pound of protein with 75 percent of the protein going into the cheese.

The witness gave four reasons for using the National Cheese Exchange 40-pound cheddar block price (block price): (1) The majority of the cheese in the five Federal orders is priced using the block price as the base price, (2) the block price is used in determining the somatic cell adjustment in the Eastern Ohio-Western Pennsylvania, Indiana, and Ohio Valley orders, as well as being used in the determination of the Class 4b price in California, (3) since there is over twice as much American cheese manufactured in blocks as is made in barrels, and the Wisconsin assembly point barrel cheese price is within one cent of the block price, the block price represents a minimum cheese price, and (4) the protein price determined pursuant to this proposal gives a greater incentive to producers to produce protein and is more equitable to handlers and producers than the (lower) protein price contained in the other proposals.

The NAJ witness continued by explaining that the proposal included the value of whey protein in the protein price so that all of the protein in the milk would be accounted for. As explained by the proponent witness, the .735 factor was determined by dividing 25 percent, which is the protein left in whey after making cheese, by 34 percent, which is the percent of protein in whey protein concentrate. The resulting value, .735, is multiplied by the monthly average 34% whey protein concentrate price to yield the whey contribution to the protein price. The witness stated that the whey protein concentrate price was selected because it is a better indicator of the value of the protein contained in whey than is dry whey or animal feed whey.

An economist supporting the NAJ proposal testified that even though the butterfat price is determined at its marginal value, that is, the value of butterfat in butter, the protein price should be determined by the value of protein in the most common use of protein in the five markets included in this proceeding. The witness pointed out that the most common use of protein is in the manufacture of cheese, with 85.9 percent of the milk marketed in 1992 in Wisconsin being used in the manufacture of cheese. The witness testified that the appropriate cheese price to be used in computing the protein price was the block price because it is a ''conservative estimate of the price actually received for block cheddar cheese.'' The witness went on to explain that the reported block price is closer to what manufacturing plants receive for barrel cheese than is the reported barrel price because when the customary premiums are added to the reported barrel cheese price the result is approximately equal to the block price.

The academic NAJ witness reiterated the NAJ position that the value of whey protein should be included in the protein price because the total value of the protein in producer milk would thus be reflected in the protein price, giving producers an incentive to produce more protein.

A witness for Central Milk Producers Cooperative (CMPC) explained that the CMPC proposal would use the monthly average Green Bay Cheese Exchange barrel price (barrel price) instead of the block price, and would not include the value of whey protein. The witness for CMPC testified that the barrel price better represents the value of cheese than the block price because there is a greater volume of trading in barrel cheese than in block cheese. The resulting protein price would be lower than the protein price computed under the NAJ proposal. A witness for CMPC explained that their proposed protein price was based on the understanding that Federal order prices are minimum prices, and that the CMPC proposal, using the barrel cheese price and not including a value for whey protein, would result in a minimum price for protein.

The CMPC protein price proposal was supported at the hearing by other hearing participants, including National Farmers Organization (NFO), Kraft, Inc., Galloway Co., Wisconsin Cheese Makers Association (WCMA), National Cheese Institute (NCI), Farmers Union Milk Marketing Cooperative (FUMMC), and the Trade Association of Proprietary Plants (TAPP). A witness for NCI explained that if the protein price is set at too high a level, cheese manufacturers would experience a declining gross margin as the price for protein increases above the return the plant can obtain from additional protein. He explained that this would be the case with the protein price as proposed by NAJ, but not with the NCI and CMPC proposed protein price.

Other witnesses supporting a lower protein price than that proposed by NAJ explained that protein should not be priced at a high level because the higher

price may disadvantage handlers who do not manufacture cheese. They testified that the higher protein price would not be recoverable in certain products such as nonfat dry milk, condensed milk, or certain Class II products, and that even though the lower protein price still may not be recoverable, it offers the best alternative.

The Galloway witness stated that if a multiple component pricing plan that derives a protein price from a cheese market value were adopted, the protein price should represent a minimum value, should be based on the barrel cheese market, and should not include a value for whey protein concentrate. He argued that such a price would have the impact of minimizing the difference between the protein and other solids prices.

The TAPP/FUMMC witness testified that protein should be priced at a level somewhat below its full value in cheddar cheese and whey for several reasons. He said that too high a protein price could invite the use of non-dairy protein, whey solids, and casein, and thereby cause an increase in the production of imitation cheese. He also said that since some Class II and III products do not recoup as much value from high protein milk as cheese and cottage cheese, the protein price should be set at a level less than its full value for cheese. The witness expressed concern that too high a protein price could result in a zero value for the residual component, or other solids. According to the witness, a zero value for the residual would fail to reflect a realistic value, and would not cover a make allowance.

In the post-hearing brief filed by NAJ, the position of using a ''justifiably high'' protein price to send a signal to producers that protein is the most valuable component in milk was reiterated. In post hearing briefs filed by CMPC, NFO, Kraft, NCI, TAPP and FUMMC, Anderson-Erickson (A–E), and AMPI North Central Region, the computation of the protein price as proposed by CMPC was supported. The reasons given in testimony for using a lower protein price than that proposed by NAJ were reiterated in briefs. In addition, A–E, Kraft and AMPI North Central Region argued that the difference between the barrel cheese price and the block cheese price is due to the cost of packaging and other nonmilk factors, and therefore the barrel cheese price should be used for determining the protein price.

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

The level of protein in milk does have a measurable affect on the value of milk used for manufacturing. This value varies among the diverse manufactured products because of differences in the market values of manufactured dairy products and in the contribution made by protein to various finished products. For instance, testimony at the hearing showed that for a one-pound change in protein in the manufacture of cheddar cheese there is a 1.32 pound change in the quantity of cheese produced, whereas in the production of milk powder a one-pound change in the level of protein would change the amount of powder produced by approximately one pound. Since the vast majority of milk in the five orders included in this hearing is used to manufacture cheese, the protein price will be based on the contribution made by protein in the manufacture of cheese.

The 1.32 factor used in both methods proposed for the computation of the protein price for these five orders is derived from a modified Van Slyke cheese yield formula, where the casein is assumed to be 75 percent of the protein and the moisture content of the cheese is 38 percent. Assuming the butterfat is constant, a change of protein by one pound in this formula will change cheese yield by 1.32 pounds. Therefore, the 1.32 factor is appropriate for determining the order protein price.

In determining the level of the protein price, the question of whether to use the average block price versus the average barrel price is a lesser issue than the question of whether or not whey protein should be included in the computation of the protein price, as proposed by NAJ. The average difference between the Green Bay Cheese Exchange average block price and average barrel price during 1992 and 1993 was $.0388 per pound. Multiplying this difference by the 1.32 factor results in an average difference of $.05 per pound of protein between the protein prices derived from the barrel and the block cheese prices. Over the same 2 years the inclusion of whey protein in the computation of the protein price would have increased the protein price by an average of $.4265.

The principal issues that must be addressed in determining the computation of the protein price are the factors that must be included to arrive at a price that most accurately reflects the value of protein in milk. In addition, the effect of the level of the protein price on the other nonfat solids price must be considered. Since the other nonfat solids price is computed as a residual of the Minnesota-Wisconsin price, the other nonfat solids price is inversely related to the protein price. In determining an appropriate protein price and other nonfat solids price, the effects of both prices on payments to producers and margins to handlers buying milk must be determined.

Inclusion of a protein price and an other solids price in determining payments to producers gives producers an incentive to increase their production of nonfat solids, especially protein. There was no evidence in the hearing record to indicate the cost to producers of increasing the protein content of milk. It is therefore difficult to determine what the absolute level of the protein price, or its relative level to the butterfat and other solids prices, must be to encourage producers to increase the protein content of milk.

On average for the 21 months of data available in the record the protein price recommended for adoption in this decision, at $1.6851 per pound of protein, is twice both the $.6379 per pound average other solids price and the $.8374 per pound average butterfat price. Certainly, pricing protein at double the price of the other components in milk gives producers a clear message that protein is the component most desired in the marketplace without over-valuing that component. The significant difference in prices between protein and the other nonfat solids and butterfat components should give producers an incentive to increase protein output.

Testimony by several proponents of component pricing explained that component pricing would be more equitable to handlers than the current skim-butterfat pricing system. The proponents explained that the increased equity would be due to handlers paying for milk based more closely on its economic value to them. This increased equity is reflected in a narrower spread in margins between handlers making cheese from low protein-low solids milk versus handlers making cheese from high protein-high solids milk. Several

exhibits showed that handlers using ''average'' milk would experience little if any change in their net margins. However, handlers using low-testing milk would experience a higher net margin than under the present pricing plan, while handlers using high-testing milk would experience a lower net margin. This result, the narrowing of handlers' net margins when compared to the skim-butterfat pricing system, would occur no matter which of the proposed pricing plans is used to price the components.

Analysis of data presented at the hearing, using price computations based on each of the proposals and averaged over the 21 months of data included in exhibits, shows a range of net manufacturing margins for cheese using the recommended pricing system of $1.57 per hundredweight compared with the $3.34 range in cheese manufacturing margins per hundredweight of milk purchased attributable to the current skim-butterfat pricing system. The three component pricing plans discussed at the hearing would result in ranges in net cheese manufacturing margins of $1.16 per hundredweight for the NAJ proposal, $1.62 per hundredweight for the CMPC proposal, and $1.70 per hundredweight for the NCI proposal.

Even though the NAJ proposal yielded the smallest spread in net margins, further analysis of the NAJ results shows that the net margins increase and then start to decline. The decline in margins occurs when there is not enough butterfat in the milk to fully utilize the protein available, thus reducing the increase in cheese yield as protein content continues to increase. Accordingly, if the price of protein is greater than the increased return from cheese, the net return will start to decline.

The decline in net returns under the NAJ proposal indicates that the NAJ proposal would overprice protein, at least when there is not enough butterfat to fully utilize the protein. The result is that the marginal return using the NAJ proposal peaks within the protein and butterfat range of average milk while the marginal return using the protein and other solids price as recommended in this decision continues to increase, although at a decreasing rate. A mandated pricing system should not set prices at levels that result in a declining marginal return, particularly when the decline occurs at or near average market component levels. Therefore, the whey protein factor should not be included in the computation of the protein price.

Exceptions to the recommended protein price reflected the positions that the respective parties expressed at the hearing and in post-hearing briefs. NAJ and Swiss Valley reiterated their position that the protein price should be computed by multiplying the block cheese price by 1.32 and adding the result of multiplying the whey protein concentrate price by .735. They stated that the higher protein price that would result from this computation is appropriate since protein is the highest-valued component in milk. They suggested that even though the recommended decision was theoretically correct in its analysis, the analysis was flawed because of the assumption that butterfat could be a limiting factor in the yield-determining role of protein. They also pointed out that by using a higher protein price the resulting other solids price would be closer to the market value of lactose, the main component in the other solids.

Although a manufacturer could purchase additional sources of butterfat under the NAJ/Swiss Valley scenario, the cost would not be the same as the original source of butterfat and would therefore have to be included in the analysis of the manufacturer's returns. Since no data was included in the hearing record to undertake this analysis, the effect of the purchase of additional butterfat on net margins was not computed. However, since the decline in net margins under the NAJ proposal begins in the range of average testing milk, it is appropriate to adopt a protein price that does not include the value of whey protein.

CMPC, Mid-Am, WCMA, Dean Foods, Kraft, NFO, Independent Milk Producers Cooperative, and Lakeshore Federated Dairy Cooperative also opposed the recommended protein price computation in comments filed in response to the recommended decision. They specifically opposed the use of the block cheese price for computing the protein price. Their main objection was that a protein price computed on the basis of the block cheese price is not the lowest possible protein price that could be adopted based on the proposals included in the notice of hearing. Their exceptions reiterated their position that Federal order prices should be minimum prices. Their comments also suggested that use of a lower protein price and a correspondingly higher other solids price would result in smaller changes in payments to producers.

Kraft, A–E and TAPP argued in exceptions that since the only difference between the block and barrel cheese prices is packaging, the higher protein price resulting from the use of the block cheese price in the protein price computation is not warranted.

The monthly average price for 40-pound block cheddar cheese on the National Cheese Exchange in Green Bay, Wisconsin, is the appropriate price to use for determining the protein price. Use of the block price results in producers receiving a higher price for protein than if the barrel price were used without handlers incurring any significantly higher cost for milk. In addition, although the record showed that more cars of barrel cheese were sold on the Exchange than block cheese, the predominant cheese form in which American cheese is manufactured in the five-market region is in 40-pound or 640-pound blocks.

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

Over the period January 1992 through September 1993, a protein price computed by multiplying the block price by 1.32 would have resulted in an average protein price of $1.6851 per pound. The CMPC and NCI proposals, using the barrel cheese price, would have resulted in an average protein price of $1.6337 per pound of protein over the same time period. A comparison of the net margins resulting from the recommended protein price versus the CMPC and NCI proposals shows that the slightly higher protein price and correspondingly lower other solids price adopted herein have a negligible affect on net margins. In fact, the spread between the highest and lowest cheese manufacturing margin declines slightly while the margin per pound of cheese remains virtually unchanged. At the same time, the producer is paid a higher protein price and thereby has a greater incentive to increase protein production.

The question to be addressed should be the level of protein price that will best accomplish the goals of component pricing rather than the magnitude of the protein price. Analysis of the data in this decision shows that using the block cheese price results in a protein price that accomplishes three goals: (1) Components will be priced at levels that reflect their value in the marketplace,

(2) components will be priced at levels that inform producers about which component has the greatest value and that make it worthwhile to produce that component, and (3) components will be priced at a level that will return a positive result to the manufacturing industry. All three of these goals are constrained by the requirement that the total value of the component prices must be equal to the Minnesota-Wisconsin price. Further, a protein price slightly higher than one based on the barrel cheese price will result in an other nonfat solids price that is closer to the market price for lactose.

Since the protein price contained in this decision will be only 5 cents greater than the price that would be computed using the barrel cheese price, rather than the 43-cent difference proposed by NAJ (using the whey protein price), the impact on producers should be very similar to the results shown in the exhibits presented by CMPC.

b. *Other nonfat solids*. The balance of the M-W price, after the values of protein and butterfat are removed, should be priced on the basis of ''other nonfat solids.'' The other nonfat solids price per pound will be computed by subtracting from the M-W price, at test, the butterfat price times the butterfat test of the milk in the M-W price survey and the protein price times the protein test of the milk in the M-W price survey. Because the computation of the other solids price is based on a residual value, the other solids price could be negative without further adjustments. Therefore, if computation of the other solids price results in a negative price, the protein price will be adjusted (downward) to result in a zero value for the other solids price.

As a residual, a NAJ witness stated, the other nonfat solids price would represent the value of lactose and ash, which are the primary constituents of the other nonfat solids, and the difference in value between a competitively set price for milk, the Minnesota-Wisconsin price, and the value of that milk based strictly on product prices.

An expert witness for NAJ testified that a higher price for other solids than would be computed by using a protein price lower than that proposed by NAJ was not justified because a higher other nonfat solids price would defeat the purpose of multiple component pricing: to give producers an economic incentive to increase the protein content of their milk. The witness also explained that since the ''other nonfat solids'' consist primarily of lactose, for which there is a limited market and cheaper substitutes, there is no reason to have a high other nonfat solids price.

A witness for CMPC explained that the CMPC proposal would result in a higher price for other nonfat solids than the NAJ proposal. The witness testified that reduced emphasis on the protein price and increased emphasis on the other solids price would reduce the impact of multiple component pricing on handlers and producers. The witness observed that the average difference in handlers' cost of milk between the current skim-butterfat pricing system and the CMPC proposal was less than one cent per hundredweight, while the NAJ proposal would result in a difference of slightly over three cents per hundredweight.

The CMPC witness pointed out that the same relationship was applicable to returns to producers. In fact, the witness stated, when comparing the effect of the current skim-butterfat pricing system on handlers' obligations with both the NAJ proposal and the CMPC proposal, there is a narrower spread from the highest difference to the lowest difference and a smaller standard deviation with the CMPC proposal than the equivalent comparisons with the NAJ proposal.

An alternative residual price was proposed by NCI and supported by Kraft. A witness for NCI testified that instead of placing the residual value on the other nonfat solids, the residual value should be placed on the remaining pounds of fluid milk. The witness explained that this residual fluid price would be calculated by subtracting the value of 3.5 pounds of butterfat and the value of the protein based on the protein test of the milk in the Minnesota-Wisconsin price survey from the Minnesota-Wisconsin price. The resulting value would be divided by 100 minus 3.5 minus the protein test of the milk in the Minnesota-Wisconsin price survey.

The NCI witness testified that placing the residual value on other nonfat solids would yield an ''other nonfat solids'' price that could not be recovered in the marketplace. In addition, he stated, although the butterfat price is based on the butter market and the protein price would be based on the return to cheese manufacture, the other nonfat solids price would have no relationship to any particular established market or component. The witness also testified that since another nonfat solids test would not be needed for the NCI proposal, administration of the pricing plan would be easier and less expensive than the other pricing proposals.

NCI, Kraft and A-E excepted to the use of other nonfat solids as the pricing factor to represent the residual value of the M-W price. NCI suggested that the same argument used in the Southern Michigan revised recommended decision (59 FR 64464) for the use of a fluid carrier component to represent the residual value of the M-W price be used in this final decision. Kraft and A-E also supported the use of a fluid carrier component. In its exceptions, Kraft stated that use of a fluid carrier would moderate pricing extremes between producers, and that use of other solids to price the residual value of the Minnesota-Wisconsin price overprices lactose and fails to recognize the value of the fluid portion of milk.

The proposal by NCI to place the residual value on a ''fluid carrier'' component has some merit in that it does not try to apply the residual value to a component such as other solids, on which the market may not place a value. The major drawback to the NCI proposal is that it ignores one of the components of milk, other nonfat solids, which is composed of lactose and ash.

Until a component pricing plan is developed that does not tie the total value of the components to the M–W price, there will be a need to adjust the price of at least one of the components from a product-based value. As explained in this decision, and in the comments and exceptions filed by various parties, the M–W price consists not only of the base value of milk, but also various premiums, different pricing systems, and probably most importantly, competition for milk supplies in Minnesota and Wisconsin. Even though good arguments can be made for using a fluid carrier to represent this residual value, the record of this proceeding supports the use of other nonfat solids to represent the residual value.

Although the other nonfat solids do not have as much market value as either butterfat or protein, they are an important component of milk. If a multiple component pricing system is to be effective it should price as many of the components in milk as possible, preferably based on the value of those components in the marketplace. There is, however, no readily available measure of the market value of the other nonfat solids. Since there was no testimony or any justification in the record for departing from the Minnesota-Wisconsin price as a basic price for milk, at least one of the components in the payment plan must represent the difference between a competitively-set pay price (the M–W) and the product-derived component prices. This residual value therefore represents not only the value of the lactose and ash, but also equates the

component values, some of which are determined by their market value, with a competitively set producer pay price.

The prospect of lactose being added to milk by producers for the purpose of benefitting from the other solids price was discussed by several hearing participants. The incentive to adulterate milk with added lactose should be no more of a problem than the current incentive to adulterate milk with water. Testing to determine whether lactose has been added should, in fact, be easier than testing for water since it would be part of the testing necessary to determine producers' payments. In addition, added lactose can be detected during normal testing procedures currently conducted on milk.

NCI's concern that testing for total solids would increase handlers' costs and difficulty of testing was not established in the hearing record. In fact, testimony indicated that many handlers are already testing for total solids. Hearing testimony also showed that the testing for total solids is as accurate or more accurate than testing for butterfat or protein. In addition, the infrared machines that are used by most laboratories will test for total solids at the same time the butterfat and protein tests are done. Therefore, there should be no significant increase in testing cost or testing difficulty with the implementation of the component pricing plan incorporated in this decision.

LOL, in its comments on the recommended decision, pointed out a ''flaw'' in the formula used to compute the other solids price. LOL noted that the M–W price is adjusted to a 3.5 percent butterfat test, but that the skim component tests are left ''at test.'' What this means is that the protein and other solids tests do not reflect the quantity of protein or solids in milk of 3.5 percent butterfat, but rather the quantity of protein and solids in the milk at test. Therefore, the value of the protein that is deducted to arrive at the residual value for computing the other solids price may be incorrect, thus resulting in an incorrect other solids price. The problem could be magnified because the other solids test does not reflect the correct quantity of other solids in the remaining skim milk. The effect of this ''flaw'' is relatively small; however, this decision adjusts the computation of the other solids price to eliminate the shortcoming observed by LOL.

c. *Butterfat*. The value of butterfat in the amended orders will be the same as under the current orders. There was no proposal or testimony to change the way butterfat currently is valued. One expert witness testified that the current system of basing the value of butterfat on the value of butter is proper.

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

As proposed, the butterfat price per pound in the amended order will be determined by multiplying the butterfat differential by 965 and adding the Class III price. The resulting price per hundredweight would then be divided by 100 to give a price per pound of butterfat. For example, if the result of the computation is $0.73085, the announced butterfat price would be $0.7309 per pound of butterfat.

d. *Miscellaneous*. The three component prices: butterfat, protein, and the other solids, will be expressed on a per-pound basis with four places to the right of the decimal. Analysis has shown that by expressing these prices to the nearest one-hundredth of a cent, the accuracy of the prices is significantly enhanced over expressing the prices to the nearest cent. Additionally, the difference between what is paid into the producer settlement fund and what is drawn from the producer settlement fund is much closer to zero than when prices are rounded to the nearest full cent.

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

The producer price differential, which represents the additional value of Class I and Class II milk in the pool and any positive or negative effect of Class III–A, will be determined by computing for each handler, and then accumulating for all handlers, the differential value (from Class III) of the Class I, Class II, and Class III–A product pounds. The differential value is adjusted, when appropriate, for shrinkage and overage, inventory reclassification, receipts of other source milk allocated as Class I, receipts from unregulated supply plants, location adjustments, and, in the Chicago Regional order, transportation and assembly credits.

For the purpose of eliminating differences between handler and producer component values, the value of the Class I skim milk and the values of the protein and other solids contained in the skim milk allocated to Class II and Class III (and somatic cell adjustments) will be added to, and the values of the protein and other solids contained in all producer milk (and somatic cell adjustments to producer milk) subtracted from, the differential pool. The accumulated total for all handlers is then adjusted by total producer location adjustments and one-half the unobligated balance in the producer settlement fund. The resulting value is then divided by the total pounds of producer milk in the pool, and an amount not less than four cents nor more than five cents is deducted. The result is the producer price differential to be paid to producers on a per hundredweight basis.

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

An issue that was not directly addressed in this proceeding concerned testing for protein. The five orders included in this hearing currently base protein testing on the standard Kjeldahl method, which tests for nitrogen and then converts the nitrogen result to protein. Since there is a certain amount of free nitrogen in milk this test somewhat overstates the protein content of milk. Recent developments in testing allow for testing for true protein which is a more accurate reflection of protein content. In no way does this decision mandate a specific testing procedure. However, when (or if) the industry does move to testing for true protein, this

decision should not be viewed as a hindrance to that conversion. At the time a change to testing for true protein may occur, a change in the 1.32 factor may be necessary.

4. *Somatic Cell Adjustment.* The producer price differential paid to each producer should be adjusted on the basis of the somatic cell content of the producer's milk. In a modification from the recommended decision, handlers' value of milk used in Class II and Class III, but not in Class I, also would be adjusted for somatic cell count (SCC). The value adjustment per hundredweight for each 1,000 somatic cells would be determined by multiplying .0005 times the monthly average National Cheese Exchange 40-pound block cheese price. Each producer's monthly average SCC, in thousands, would be subtracted from 350 and multiplied by the value adjustment per 1,000 somatic cells. The difference between somatic cell adjustments to handler value and to producer value will be included in the computation of the producer price differential.

A wide range of somatic cell or quality plans were included in the notice of hearing and at the hearing itself. In general, all parties agreed that high-quality milk is important to all segments of the dairy industry. The major differences between the parties arose over the questions of how and whether quality and/or somatic cell adjustments should be included in the Federal order program.

A witness expert in the field of milk testing and quality testified about the influence somatic cells have on milk and the resulting affect on products made from milk. The witness explained that in normal healthy cows the somatic cell count is around 50,000. When an infection occurs in the udder of the cow white blood cells enter to fight the bacterial infection. The SCC thus increases with the increasing number of white blood cells. In fact, white blood cells and somatic cells are synonymous in this context. The witness continued by explaining that white blood cells contain enzymes that are designed to break down the cell walls of the bacteria that are infecting the udder, but do not distinguish between milk protein and bacteria. As a result, milk protein is also degraded. The witness also stated that the enzyme causes some deterioration in milkfat. The witness continued by explaining that these white blood cells also cause to be activated a proteolytic enzyme that is present in all milk.

The expert witness went on to explain that casein, which is the functionally important protein in milk, is broken down into smaller protein chains that cannot perform the same functions as the casein. In fact, the witness explained, the destruction of the casein affects all dairy products that rely on casein for structure or function. These products include cheeses, whipped cream, yogurt, ice cream, and condensed and dry products used in the manufacture of other products in which casein is a functional necessity. The witness also explained that higher SCC milks have a tendency to have a faster increase in ''acid degree value'', which is a measure of rancidity and off flavors, than milks with low SCCs. The witness testified that most of the damage occurs in the udder of the cow, where conditions are ideal for the various enzymes to work. Once the milk is removed from the udder and cooled and stored properly, further deterioration does not stop but is slowed down significantly, and further damage is minimized.

The expert witness discussed the effect that somatic cell counts have on the manufacture of various dairy products, specifically cheese. He explained that high SCC milk results in lower cheese yields as well as problems with moisture control and the activity of the starter culture. The increased somatic cells result in less casein in relationship to the total protein so that less cheese is produced than would be indicated by the amount of protein present. The degraded protein ends up in the whey with the rest of the whey proteins. The witness explained that in studies using individual cow's milk cheese yield would drop dramatically as the somatic cell count went above 100,000, with the yield staying fairly constant as the somatic cell count climbed to 1,000,000.

The witness pointed out that the cheese yield effect of somatic cells differs when bulk tank milk is used instead of an individual cow's milk. He explained that in the case of bulk tank milk the relationship between cheese yield and somatic cell counts would be linear, with cheese yields declining as SCCs increase. The witness stated that the linear relationship is caused by the weighting of the SCCs in the bulk tank. Bulk tank tests are weighted averages rather than simple averages. For example, if 100 pounds of milk with a somatic cell count of 50,000 and 400 pounds of milk with a somatic cell count of 250,000 are added to the bulk tank the somatic cell count would be a weighted average of 210,000 and not the simple average of 150,000.

The witness also testified that the effect of somatic cell levels on fluid milk products is reflected in higher acid degree values that indicate rancidity and off flavors, resulting in shorter shelf life.

The expert witness testified that routine testing for somatic cells is conducted using a Foss-O-Matic infrared analyzer. The reference method for testing is the direct microscope somatic cell count in which the sample is stained and the somatic cells are counted using a microscope. The witness explained that if the electronic instruments are calibrated to the same reference samples the resulting test values and standard deviations should be in close agreement. The witness concluded that on a relative basis the results should be close to what would be obtained using other analytical tests.

The notice of hearing contained a proposal by CMPC to include an adjustment for somatic cells. However, at the hearing, a witness for CMPC explained that CMPC had decided neither to support nor oppose the inclusion of a somatic cell adjuster in the amended orders. The CMPC witness testified that the individual members of CMPC were free to support or oppose any of the somatic cell proposals as they saw fit.

As originally proposed by CMPC, the somatic cell adjustment would be computed by multiplying the National Cheese Exchange barrel price times .0005. The resulting quantity would be multiplied by 500 minus the somatic cell count of the milk, in thousands. The resulting value would be applied on a per hundredweight basis. As explained by a witness for CMPC, the proposed somatic cell adjuster would apply to all producer milk, including that purchased by Class I handlers. The witness went on to explain that the effect of somatic cells on the value of producer milk and milk used in Class II and Class III would be included in the computation of the producer price differential. A somatic cell adjustment on Class I milk would not be included in the pool, and therefore would not affect Class I handlers' cost of milk.

A witness for WCMA quoted extensively from the MCP recommended decisions for the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania milk marketing orders, and for the Michigan milk order, supporting the inclusion of an adjustment for somatic cells in Federal orders. The witness supported the CMPC proposal, but suggested that the somatic cell adjustment be applied to all milk; that is, Class I milk would not be exempted from a somatic cell adjustment. In addition, he proposed that the somatic cell adjustment be

applied to the protein price rather than on a hundredweight basis.

A witness for TAPP and FUMMC expressed support for including a somatic cell adjustment in the amended orders. The TAPP-FUMMC brief also supported such a provision. The witness stated that a somatic cell adjustment would benefit producers, handlers, and consumers by increasing the volume of milk marketed, improving yield, and supplying consumers with more nutritious, better quality dairy products. The TAPP/FUMMC witness explained that their proposal would have a neutral range of 301,000 to 400,000 somatic cells with a one-cent positive adjustment for each 50,000 somatic cell count below the neutral range up to a maximum of a six cents as the somatic cell count declined, and a one cent negative adjustment for each 50,000 somatic cell count above the neutral range up to a maximum of ten cents as the somatic cell count increased. The TAPP/FUMMC witness testified that under their proposal the somatic cell adjustment would apply to all producer milk, milk used in Class III, and, if the plan is to be revenue neutral, also to milk used in Class II.

A witness for Swiss Valley Farms Company (Swiss Valley) testified in support of including additions and subtractions for somatic cells in the amended order. The Swiss Valley witness explained that somatic cells add proteolytic and lipolytic enzymes to the milk, as well as a plasmin enzyme that is extremely heat stable, such that it is not deactivated during pasteurization. Therefore, the enzyme continues to degrade the milk during storage. The witness added that low SCC milk is important to the Swiss Valley bottling operations because it results in fluid milk products of improved flavor, and to their cheese-making operations because of the resulting higher casein and lower whey protein content of the milk, which increases manufacturing returns.

The Swiss Valley witness proposed that the somatic cell adjustment begin at 400,000, with a positive adjustment as the SCC declines, and a negative adjustment as the SCC increases, from that level. The adjustment would be five percent of the National Cheese Exchange block price per 100,000 somatic cells. The Swiss Valley witness explained that the adjustment for somatic cells should apply to all producer milk and that Swiss Valley would support a somatic cell adjustment on Class II and Class III milk for the handler.

In its post-hearing brief, Swiss Valley reiterated the testimony of its witness in favor of including an adjustment for somatic cells in the amended order. Besides supporting the position of the Swiss Valley witness, Swiss Valley expressed general support for a somatic cell adjustment.

Testimony by a fluid processor witness indicated that the handler pays a quality premium when buying milk from producers and specifies minimum quality standards on purchased tanker milk.

A witness for Mid-America Dairymen, Inc. (Mid-Am), testified that Mid-Am favored the inclusion of an adjustment for somatic cells in the amended order. The witness quoted from the Final Decision of the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania proceeding to support the position of Mid-Am that an adjustment for somatic cells should be included based on the effect somatic cells have on all milk. The witness explained that quantifying the adjustment on an incremental basis was difficult, and since not all milk is used in the manufacture of cheese a moderate adjustment rate should be used. The witness explained that the Mid-Am proposal would apply the somatic cell adjustment to all producer milk, on a hundredweight basis, with a positive adjustment for a somatic cell count below 400,000 and a negative adjustment for SCCs above 400,000.

The witness explained that under the Mid-Am proposal, the somatic cell adjustment would be computed by subtracting the monthly average somatic cell count (in thousands) of the producer from 400 and then multiplying the result by the National Cheese Exchange monthly average barrel cheese price multiplied by .0005. He stated that since the somatic cell adjustment would be included in the computation of the producer price differential, on the producer side only, the total size of the pool would not change but individual producers would receive more or less, depending on whether their milk had a somatic cell count above or below the average SCC of the market. The Mid-Am witness continued by explaining that the Mid-Am proposal would be a redistribution of money from high somatic cell testing producer milk to the lower somatic cell testing milk, since there would be no additional money in the pool from the somatic cell adjustments.

Instead of supporting the inclusion of somatic cell adjustment provisions in the five Federal orders, witnesses testifying on behalf of Land of Lakes, Inc., and NCI supported those organizations' proposals to allow each handler to submit a somatic cell or quality adjustment plan for payments to its own producers to the market administrator.

A witness for LOL testified that with the LOL proposal a handler could reduce a producer's payment by up to ten percent from that required by the order if other producers of the handler received positive adjustments to their payments, as long as the total payments were equal to at least the minimum total order payment requirements. The witness explained that LOL's proposal does not contain specific criteria for quality and/or volume adjustments. Each handler would submit an individual quality and/or volume adjustment plan to the market administrator which the handler would be required to adhere to until a new plan would be submitted. The witness testified that there is general agreement among handlers for the need to adjust payments for milk based on quality and volume. The witness continued by arguing that since the industry has not yet reached a consensus on how to adjust for quality and volume, it would be appropriate to allow each handler to develop its own quality and volume plan with the approval of the market administrator.

A witness for NCI testified that even though somatic cells affect the quality of milk, particularly in the manufacture of cheese, it is difficult to place a value on their effect. The witness explained that the variability in somatic cell levels from day to day and producer to producer makes determining an appropriate payment adjustment imprecise. In addition, the witness pointed out that other factors affect milk quality, and that placing a precise value on their effect is even more difficult than in the case of somatic cells. The NCI witness explained that the NCI proposal would allow each handler to establish and apply its own somatic cell adjustment schedule, with the approval of the market administrator, as long as the total payments to producers met or exceeded the Federal order minimum value. The witness explained that each handler could change its payment plan as conditions warranted.

A witness for Kraft emphasized the earlier testimony on the effect of somatic cells on milk quality and cheese yields. The witness listed several studies supporting the results testified to by the NAJ expert witness. The Kraft witness testified that Kraft has, since the early 1980's, employed a quality payment program as part of its producer payroll. The witness went on to state that the plethora of somatic cell payment programs in use in the industry is strong evidence of the industry's recognition that somatic cells

play a major role in milk quality. The Kraft witness explained that, in order of preference, Kraft supports the proposal submitted by NCI, followed by LOL's proposal and the TAPP/FUMMC proposal.

Kraft, in its post-hearing brief, reiterated its support for a somatic cell adjustment to be included in the amended order. Kraft's brief did not support a particular adjustment plan but preferred the LOL–NCI concept. If that plan were not adopted, Kraft expressed support for the proposal by Mid-Am or the original CMPC proposal. A brief largely reiterative of NCI testimony was filed on behalf of NCI with the Dairy Division rather than the Hearing Clerk, and was received more than 3 weeks after the extended due date for filing briefs. The brief is not considered in this decision.

In the Anderson-Erickson Dairy Company (A–E) post-hearing brief, A–E opposed the application of an adjustment for somatic cells to Class I milk. They contended that the Class I handler is unable to recover the added cost of lower somatic cell count milk from the retail market. This position was supported in the post-hearing brief filed by Lamers Dairy and Hansen Dairy (Lamers). Lamers pointed to testimony that indicated that the monetary effect of somatic cells on Class I milk could not be quantified as it could be with the manufacture of cheese.

NFO, in its post-hearing brief, opposed the inclusion of any somatic cell adjuster in the recommended order. NFO expressed the opinion that support for a somatic cell adjuster was rather weak, with none of the positions presented having strong support. As an example, the NFO brief pointed to the neutral position taken by CMPC at the hearing after including a somatic cell adjuster in the original CMPC proposal. The NFO brief continued by explaining that testimony at the hearing indicated that the relationship between somatic cell levels and economic return is not a clear and definite relationship. The NFO brief went on to point out that there was no consensus at the hearing on how to apply a somatic cell adjuster.

There is ample testimony and evidence to support the inclusion of a somatic cell adjuster in these amended orders. The recommended decision proposed that a somatic cell adjustment be applied to all producer milk, regardless of the class in which it is used. Such an application would have avoided including the difference between the handler and producer somatic cell adjustments in the computation of the producer price differential; a procedure that, during some months, could result in a significant adjustment in the producer price per hundredweight. The recommended application also would have assured that all handlers' obligations would reflect the quality of the milk they receive.

The somatic cell adjuster per hundredweight per 1,000 somatic cells will be calculated by multiplying .0005 times the monthly average National Cheese Exchange 40-pound block cheese price. To determine the value for an individual producer, the producer's monthly average somatic cell count (in thousands) will be subtracted from 350 and multiplied by the somatic cell adjuster. The value of Class II and Class III milk will be adjusted by the same formula. However, for the purpose of adjusting handlers' values, 350 will be subtracted from the best available source of the somatic cell test. This information may be, but would not necessarily be limited to, load tests, farm tests, and monthly average tests.

The value of the somatic cell adjustment will be applied on a per hundredweight basis in the handlers' payments to producers and in payment for Class II and Class III milk. Somatic cell counts will be reported with the report of receipts and utilization for all producer milk and on Class II and Class III milk.

The application of the somatic cell adjustment contained herein will promote orderly marketing. As pointed out by several witnesses testifying at the hearing, producers in these markets are faced with a wide array of quality premium programs. These programs have no standard basis or standard value that is applied between handlers. Therefore a producer is faced with trying to decide which premium program will give the producer the greatest return without a standard with which to compare. Inconsistent premium programs also result in producers with identical milk receiving different prices for that milk depending on which handler is procuring the milk. The inclusion of this somatic cell adjustment will tend to effectuate the declared policy of the Act by encouraging orderly marketing through the standardization of the basis for payment on the level of somatic cells in the milk and the standardization and checking of the testing and test procedures used for determining the somatic cell counts.

As was stated earlier, all parties agreed that high quality milk is important to all segments of the dairy industry. In fact, there was little opposition at the hearing to the inclusion of an adjustment for quality in the amended orders. Even though testimony indicated that there are other quality factors that are important in overall milk quality, there was no determination of their effect on milk quality or any attempt to compute a relevant associated value. Therefore, somatic cell count will be used as the quality adjustment factor in this decision.

There are two basic reasons to apply the somatic cell adjustment rate on a hundredweight basis rather than to adjust the protein price. First, the somatic cell adjustment reflects the quality of milk in many uses rather than just cheese, and second, application of the somatic cell adjustment on a hundredweight basis makes it very clear to producers and to handlers that quality affects milk used in all products. Although testimony clearly showed that somatic cells affect the quality of milk in all uses, a value determined on the basis of the effect of somatic cells on cheese reflects the most prevalent use of milk in these markets and is the easiest way to determine a value for payment to producers.

A lack of agreement among hearing participants occurred in trying to determine the application of a somatic cell adjustment. There was a general consensus that an adjustment should be made in the producer pay price for quality and/or somatic cells. The rate at which such adjustment should be made varied by proposal, but was tied to the reduction in cheese yield that occurs as somatic cell counts increase. Several witnesses testified that the somatic cell adjustment rate should be set at a moderate level. Testimony indicated that most of the decline in cheese yield occurs as the SCC increases from below 100,000 to above 100,000, with a much slower decline in yield as the somatic cell count increases to one million. However, testimony also showed that declines in yield are much more linear when somatic cell tests and cheese yield studies are done with bulk tank milk than with the milk of individual cows. Several proposals suggested using a factor of .0005 times the cheese price in determining the value of the somatic cell adjustment per 1,000 somatic cells. This factor is derived from the approximately four percent decline in cheese yield as the somatic cell count increases from 100,000 to one million. This is the same adjustment that is used in other Federal orders in which a somatic cell adjuster is included.

The formula used to determine the somatic cell adjuster reflects the changes in the yield of cheese as the levels of somatic cells change. The formula also ties the adjustment to the

value of the milk by using the block cheese price to determine the value per 1,000 somatic cells. However, since record evidence clearly shows that the effect of somatic cells on Class I and Class II products is related more to the quality of the finished product than to the yield of the product, the formula should reflect less than the full value of the effect of somatic cells on cheese yield. Using the recommended formula, the somatic cell adjustment for the average producer under the Chicago Regional order would be a plus three cents per hundredweight, far below the 25 cents per hundredweight average quality premium that is shown in hearing exhibits as being paid currently.

The corresponding somatic cell adjustments for average producers under the four orders in addition to Chicago are: Upper Midwest, zero cents; Iowa, minus one cent; Nebraska-Western Iowa, minus six cents; and Eastern South Dakota, minus three cents. The formula results in an estimated range of forty-eight cents per hundredweight from a somatic cell count of 1,000 to a somatic cell count of 750,000, or a positive twenty-two cents to a minus twenty-six cents, although there is no limit on the deduction that may be made since there is no limit on the maximum SCC in this decision.

The use of a neutral point was supported by various proponents of a somatic cell adjuster. Several others suggested a neutral range. The record contains numerous references to a neutral range or point around a somatic cell count of 400,000. One witness expressed the opinion that the base level for the somatic cell adjustment should be near the average for the five markets. Another witness explained that their proposal used 400,000 SCC because that is where their present quality program begins. Based on data included in the hearing record, the average SCC for producers whose milk is pooled under the five orders is 367,000. Therefore, a neutral point of 350,000 is appropriate. It is close to the average for the markets, and not substantially different from the values that witnesses found appropriate. Also, by using the formula included herein, proponents of both a neutral point or a neutral range are accommodated because the formula yields no value adjustment for approximately plus or minus 7,000 SCC around 350,000.

The formula will give producers an incentive to reduce their SCCs while minimizing the effect of the somatic cell adjuster on those products in which somatic cells have a quality effect rather than a yield effect.

Neither the quality proposal by LOL nor the somatic cell proposal by NCI, in which each handler would be allowed to submit an individual quality or somatic cell payment plan to the market administrator, is included in this decision. Although the Agricultural Marketing Agreement Act in 7 U.S.C. 608c(5) does allow for adjustments to minimum pay prices on the basis of quality, such adjustments should be at a uniform rate for all producers in the market. Allowing each handler to have its own payment schedule would defeat the concept of uniform pricing to producers, eliminate the purpose of allowing quality adjustments under the order, and lead to disorderly marketing. Producers with identical milk shipping to different handlers within the same market could, and probably would, have different minimum order pay prices if each handler had its own quality or somatic cell payment plan.

A number of witnesses testified that the profusion of payment plans currently in effect in the market today are causing disorderly marketing, and that one of the benefits of incorporating multiple component pricing with a somatic cell adjustment in the five orders would be to reduce or at least standardize the vast array of producer payment plans currently in effect in the region. In view of such testimony, adoption of the LOL or NCI quality adjustment proposals would serve no purpose.

Support for the inclusion of a somatic cell adjuster in the amended orders was expressed in comments filed in response to the recommended decision by several parties including LOL, Cass-Clay Creamery, Mid-Am, Grande Cheese, WCMA, Kraft, AMPI-Morning Glory Farms, TAPP, and Swiss Valley.

Mid-Am, Grande, WCMA, Kraft, and Swiss Valley expressed unequivocal support for the inclusion of a somatic cell adjuster. Mid-Am stated that higher SCCs decrease cheese yields and also affect fluid products. Grande and WCMA expressed the view that the recognition of the importance of quality is long overdue, particularly on all classes of milk, and that producers should be rewarded for producing quality milk. Kraft, in support of the somatic cell adjustment, explained that high SCCs have a direct and measurable adverse impact on cheese yields and, in fact, on all dairy products. Kraft's comments explained that even though the SCC is not the only quality factor, it is a good indicator of overall milk quality. Kraft also said that if the somatic cell adjustment is not applied to all milk, disorderly marketing could occur, with fluid handlers trying to switch supplies to take advantage of the economics of procuring a low-SCC milk supply at no additional cost.

Swiss Valley, with two bottling plants in the marketing areas covered by this decision, expressed support for the inclusion of a somatic cell adjustment. Swiss Valley particularly expressed support for the application of a somatic cell adjustment to fluid milk, stating that a somatic cell adjuster will help insure quality milk for fluid handlers that will result in improved flavor and longer shelf life for fluid milk. They explained that the inclusion of a somatic cell adjustment under the Federal order program would eliminate the wide array of somatic cell programs currently in the marketplace and that even though the somatic cell adjustment is not large it is economically sound.

The remainder of the comments favoring a somatic cell adjuster included some qualifiers or suggested modifications to the recommended decision. LOL and Cass-Clay Creamery suggested that if a somatic cell adjuster is included in the final decision, it should not apply to movements of milk between handlers but only to payments to producers. LOL added that a somatic cell adjustment on milk movements between handlers was not included in the notice of hearing.

In exceptions filed by AMPI-Morning Glory Farms, the cooperative supported the somatic cell adjuster on all milk, but suggested that the ''break point'' be at a somatic cell count of 400,000 versus the 350,000 contained in the recommended decision. AMPI also stated that there should not be a somatic cell adjuster if it is not applied to all milk, because a somatic cell adjuster on only Class II and Class III milk would cause disorderly marketing.

TAPP's exception supporting a somatic cell adjuster recommended several changes. TAPP's comments expressed the belief that the amount of the recommended somatic cell adjustment is too large, causing too great a spread in value between the lowest and highest somatic cell tests. TAPP also suggested that there be a larger neutral range, and that the somatic cell adjustment should remain constant rather than changing each month based on the cheese market.

The Milk Industry Foundation (MIF), along with many fluid handlers without plants in the affected marketing areas, filed comments opposing the inclusion of a somatic cell adjustment on Class I milk in the final decision. They all gave the same six reasons for their opposition: (1) There was not enough evidence at the hearing to support a somatic cell adjustment on Class I milk,

and, in fact, that a Class I handler testifying at the hearing opposed a somatic cell adjustment on Class I milk; (2) somatic cells are not the only quality factors that should be included; (3) a somatic cell adjustment on Class I milk would cause disruptive and inequitable marketing conditions for fluid handlers, both between and within marketing areas; (4) fluid handlers cannot recover the added cost of the somatic cell adjustment from the marketplace; (5) a somatic cell adjustment would eliminate advance Class I pricing; and (6) Federal orders should not be involved in quality issues.

Anderson-Erickson (A–E), Dean Foods, and Marigold, who are fluid handlers regulated under one or more of the affected orders, opposed the inclusion of a somatic cell adjustment on Class I milk. They gave the same arguments as MIF, et al., plus several more. A–E comments stated that a somatic cell adjustment based on the effect of somatic cells on cheese has no bearing on the effect of somatic cells on Class I milk, and therefore does not reflect an appropriate value adjustment. Marigold explained in its exceptions that there is no evidence that specific levels of somatic cells can be discerned in fluid milk by consumers, and therefore a value cannot be placed on varying levels of somatic cells in Class I milk. Dean's comments expressed the belief that value adjustments based on quality should be determined by competition rather than by Federal orders.

Wells Blue Bunny, NCI, and Independent Milk Producers Cooperative filed comments opposing the inclusion of any somatic cell adjustment in the amended order.

Lakeshore Federated Cooperative (Lakeshore), consisting of Manitowoc Milk Producers, Mid-West Dairymen's Company, and Milwaukee Cooperative Milk Producers were joined in their exceptions to the recommended decision by FUMMC, Muller Pinehurst Dairy, Prairie Farms, Woodstock Progressive Milk Producers, and the Galloway Company in opposing any inclusion of a somatic cell adjustment in this decision. In addition to the same arguments that were put forth by the fluid handlers, Lakeshore's opposition was directed toward the need for an additional cost of testing for somatic cells. Lakeshore's comments pointed out that the State of Wisconsin requires one test a month for somatic cells, which also satisfies the requirements for the PMO (Pasteurized Milk Ordinance) and IMS (Interstate Milk Shippers) certification. The comments stated that a requirement by the market administrators that producer milk be tested for somatic cells four times per month for payment purposes, or an additional 40 tests per year, would create a burden on cooperative associations that do not do so much testing at the present time. Lakeshore went on to argue that the recommended decision would conflict with state regulations with regard to somatic cells, and asserted that because somatic cell testing is adequately monitored by the states there is no need for additional monitoring by market administrators.

Lakeshore claimed that including a somatic cell adjuster would cause its members to sustain a financial loss due to the cost of testing for somatic cells. Lakeshore claimed that testing for somatic cells would increase the costs of labor, computer programming, paper work, compliance with bureaucratic regulations, and the cost of additional laboratory equipment, which could not be recovered. Lakeshore also claimed that a recent increase in the Chicago Regional assessment was due to somatic cell testing in the Indiana marketing area, but there is no record evidence supporting this claim.

Lakeshore also stated that because the relationship between cheese yields and somatic cell count is not a straight-line relationship, no value can be placed on somatic cell counts of differing levels.

FUMMC and Prairie Farms filed exceptions of their own. FUMMC expressed its opposition because its proposal for a wide neutral range where there would be no adjustment was not adopted. FUMMC also claimed that somatic cell test results are variable and inaccurate, making the recommended decision impractical and unworkable.

Prairie Farms expressed the opinion that a somatic cell adjustment would cause disorderly marketing conditions between orders with a somatic cell adjuster and those without one. Prairie Farms also expressed the belief that sanitary and quality standards are beyond the scope of Federal orders.

NFO filed exceptions opposing the recommended somatic cell adjustment in its entirety, for a number of reasons. NFO claimed that support for inclusion of a somatic cell adjustment in the Federal orders was limited at the hearing and in post-hearing briefs, and argued that major changes of the magnitude of a somatic cell adjustment have not previously been made with such limited support. NFO asserted that the premise that inclusion of a somatic cell adjuster would contribute to orderly marketing would not be fulfilled.

NFO's comments further claimed that the recommended somatic cell adjustment would result in less revenue to dairy farmers because the 350,000 base point for the adjustment is higher than average producer milk in four out of five of the affected markets. NFO argued that any somatic cell base point (the somatic cell level from which producer prices are adjusted up and down) should reflect the somatic cell count of the Grade B milk in the Minnesota-Wisconsin price survey. NFO also argued that a somatic cell adjuster would reduce over-order premiums and thus reduce dairy farmer incomes.

Finally, NFO argued that the record does not support a linear relationship between cheese yields and somatic cell counts, and that the decision did not take into account the extra cost of testing.

Although NFO's comments opposed adoption of a somatic cell adjuster, the cooperative did support application of such an adjuster to all milk, including Class I, if the somatic cell adjustment is included in the final decision.

Comments filed in response to the recommended decision contained significant support for inclusion of the somatic cell adjustment as contained in the recommended decision. The comments received also reflected substantial opposition from fluid milk handlers to the aspect of the somatic cell adjustment that would have applied to all producer milk, including Class I.

On the basis of the exceptions received, this decision has been changed from the recommended decision to include an adjustment to the value of milk based on the level of somatic cells contained in all producer milk and in Class II and Class III milk. As a result, the somatic cell adjustment will be included in the pool process, so handlers will have to report somatic cell count information with their reports of receipts and utilization.

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

Monitoring of somatic cell testing, which already clearly affects the

payments made to most of the producers pooled under these five orders, by market administrators will assure as much uniformity and accuracy as possible in the testing procedures. Also, since 70–80 percent of the milk pooled under these orders is used in Classes II and III, application of a somatic cell adjustment to that proportion of the milk used by handlers will doubtless result in a favorable effect on the general quality of the milk in the marketing areas.

Kraft and AMP's concerns about the ability of fluid milk handlers to procure supplies of milk with low somatic cell counts at no extra cost are unlikely to materialize. According to the record, many fluid handlers already pay premiums for high-quality milk. There is nothing in the provisions of the amended orders that would prevent the continuation of the payment of such premiums. In fact, the requirement that the value of milk used in Classes II and III be adjusted for its somatic cell content will most likely necessitate equivalent payments by fluid handlers in order to assure that the supplies of milk they receive are of at least average quality.

LOL may be correct that having to account for somatic cells in transfers and diversions could cause additional administrative effort. This requirement is included, however, so that the market administrators can ensure that proper payment is made for milk purchased from producers and cooperatives. There is no difference in this requirement other than the accounting for protein, other solids and butterfat in transfers and diversions.

The suggestions by TAPP that the decision contain a larger neutral range and a constant somatic cell adjuster will not be included in this decision. A larger neutral range, particularly around the mean, would provide producers little incentive to reduce herd somatic cell counts below the neutral zone. Depending on the size of the neutral zone, this could be a reduction of 100,000 or more. The somatic cell adjustment provisions adopted in this decision will result in a neutral range of approximately a plus and minus 7,000 somatic cell count from 350,000.

The economic rationale for a somatic cell adjustment is the effect that somatic cells have on protein and the resulting cheese yield. Therefore, it is logical and appropriate to adjust the somatic cell adjustment rate according to changes in the value of cheese. The somatic cell adjustment rate in this decision is moderated in that it does not reflect the value of the entire change in cheese yield that occurs as somatic cell counts in milk change.

The assertion by some exceptors that there is not a straight-line relationship between cheese yield and somatic cell count is not supported by the hearing record. A witness who has done research in such areas testified that on an individual cow basis the relationship is not linear, but that when the milk of multiple cows and farms is intermingled in a bulk tank, the relationship becomes a linear, or straight-line, relationship.

Use of a somatic cell count base point of 350,000 is appropriate, especially because the somatic cell adjustments on the handler and producer sides will be pooled. The 350,000 base point is very close to the average somatic cell count for these markets. The smaller the value of the somatic cell adjustment, the less effect the pooling of somatic cells will have on the producer price differential. Contrary to the exceptions filed by NFO, the effect of the somatic cell adjustment on the average Chicago Regional milk producers was computed to be a plus 3 cents per hundredweight rather than a negative 3 cents.

Concerns were expressed by several of those filing comments that inclusion of a somatic cell adjuster under the orders would reduce current quality premiums prevalent in the marketplace. This decision in no way discourages a handler from paying premiums for quality at whatever rate the handler deems appropriate, as long as producers are paid the minimum Federal order price. In fact, the rate of adjustment for somatic cell count included in the orders is not intended to represent the entire value of the somatic cell effect on milk. In addition, administration of an SCC adjustment under the orders should result in greater handler and producer confidence in the accuracy of the somatic cell counts on which such premium payments are based.

The objection by many of the parties filing exceptions to the somatic cell adjustment that the cost of testing and reporting somatic cell counts would be an excessive burden on producers and their cooperative associations is difficult to understand. According to the record, handlers are already testing widely for somatic cells and adjusting producers' payments on the basis of those tests.

Several parties argued that a somatic cell adjustment should not be included because the Federal milk orders should not be involved in quality issues. However, the Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. 608c(5) specifically authorizes adjustments to prices paid to producers for ''the grade or quality of the milk delivered.'' The record of this hearing clearly shows that the presence of somatic cells directly affects the economic value of producer milk.

The somatic cell adjustment provisions adopted herein do not establish standards, such as the Grade A standard under the PMO, but only serve to reflect some of the value to handlers of the level of somatic cells in milk. Although testing for somatic cell counts on a once-per-month basis may be sufficient for the purpose of assuring that a dairy farm is consistently below the maximum allowed level for Grade A status, testing for payment purposes must be done more often. As noted by several exceptors, somatic cell counts are more variable than other characteristics for which milk is commonly tested. More frequent samples and tests are necessary for payment purposes than for the purpose of assuring compliance with health standards to assure that the most accurate possible picture of each producer's production is obtained. The testing monitored by market administrators will cause no conflict with state testing programs because it will not be used to determine compliance with the Grade A standard.

There is no disagreement that somatic cell testing is more variable than butterfat testing. However, the record shows that most producers whose milk is pooled under these orders currently are having adjustments made to their milk checks on the basis of such testing. The hearing record supports the idea that the reliability and accuracy of somatic cell testing are within acceptable tolerances when testing instruments are calibrated correctly. It is expected that these aspects of somatic cell testing will be improved under the supervision of the market administrators for these orders.

The contention that the inclusion of a somatic cell adjuster in these five orders will cause disorderly marketing conditions between these and neighboring orders has no basis. There currently is not, nor ever has been, perfect coordination of pricing between the orders. Even though attempts are made to align prices between orders through location adjustments, other variables such as Class I utilization tend to result in different uniform prices in overlapping procurement areas. The limited magnitude of the somatic cell adjustment will not create any more distortion than already may occur in these marketing areas.

5. *Conforming changes.* To accommodate multiple component pricing a number of changes need to be made in the current order provisions of the five orders in this decision. To

compute a handler's obligation and the producer price differential, several prices need to be defined. The Class I differential price should be defined as the difference between the current month's Class I price and the current month's Class III price. The Class II differential price should be defined as the difference between the current month's Class II price and the current month's Class III price. These differential prices should not be confused with the fixed values that are added to the Minnesota-Wisconsin price for the second preceding month to arrive at the Class I and Class II prices for the current month. The Class III–A differential price should be defined as the difference between the current month's Class III–A price and the current month's Class III price. It should also be pointed out that these differential prices may be negative, which currently happens when the Minnesota-Wisconsin price is greater than any of these prices. The skim milk price will be calculated by subtracting from the Class III price the value determined by multiplying the butterfat differential by 35. The skim milk price will be expressed on a per hundredweight basis with two places to the right of the decimal.

Since producer location adjustments are not changed in this decision, the application of such adjustments to the producer price differential remains unchanged. In some of the orders the uniform price is ''snubbed'' at the Class III price when producer location adjustments are applied. In these orders, the producer price differential will be adjusted for location until the producer price differential is zero if the producer price differential at the zero zone is zero or greater. However, if the producer price differential is negative, no minus producer location adjustment will be applied. Plus adjustments to a negative producer price differential would be made. In those orders in which the uniform price is not ''snubbed'' to the Class III price, producer location adjustments will be applied as they are currently.

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

The recommended decision proposed that for the Upper Midwest order only, the due date for handlers to submit reports of receipts and utilization be changed from the 10th of the month to the 8th of the month to allow a longer period of time for the processing of data and the announcement of the producer price differential. A number of Upper Midwest handlers filed vehement exceptions to the proposal on the basis that they would need all the time they were accustomed to having to prepare their handler reports and make evaluations with respect to which milk should be pooled or depooled.

As a result of the comments filed by a number of handlers, the reporting date for the Upper Midwest order will remain the 10th. However, as suggested in the comments filed by AMPI North Central Region and Schroeder Milk Company, Inc., the market administrator will be given additional time (1 day, until the 12th) to complete the pooling process and announce the uniform price.

In addition to allowing an additional day for the market administrator to compute the producer price differential, the order is amended to maintain the amount of time currently allowed handlers to make payments into the producer-settlement fund by moving the date by which such payments must be made from the 15th to the 16th of the month. The date for making payments to the administrative and marketing services funds will also be changed from the 15th to the 16th. The date by which the market administrator must make payments from the producer-settlement fund will remain the 17th.

For purposes of allocation of producer receipts the assumption will be made that the protein and other solids cannot easily be separated from skim milk. The protein and other solids will therefore be allocated proportionately with the skim milk based on the percentage of protein and other solids in the skim milk received from producers.

The implementation of this multiple component pricing decision will require several changes in the way handlers pay for milk. Partial payment at the Class III price for the previous month for milk deliveries during the first 15 days of a month was proposed by both NAJ and CMPC. Although no objections to the proposal were expressed, there was no testimony supporting or opposing the proposal. Therefore, there is no basis in the record of the proceeding to make substantive changes in the payment provisions of the orders that provide for partial payments at a significantly different level.

Currently, the Nebraska-Western Iowa order, the Upper Midwest order, and the Iowa order require partial payments to be based on the prior month's uniform price. Since this component pricing plan does not contain a uniform price, these three orders will be changed to require the partial payments to be made at the ''statistical uniform price'', announced by the market administrator on or before the 12th day of the month for which partial payment is to be made.

The Chicago Regional order will also be changed from the current requirement that the partial payment be based on the lowest class price for the prior month to a partial payment based on the prior month's Class III price. The Eastern South Dakota order does not need to be changed.

Final payment to producers will be determined by the total hundredweight of milk times the producer price differential adjusted by the applicable location adjustment, plus or minus the total hundredweight of milk times the adjustment for somatic cells, plus the pounds of protein times the protein price, plus the pounds of other solids times the other solids price, plus the pounds of butterfat times the butterfat price, minus any authorized deductions currently allowed.

Handlers purchasing milk from cooperative pool plants will pay for Class I milk at the Class I differential price plus the pounds of skim milk in Class I at the skim milk price plus the pounds of butterfat at the butterfat price; for Class II and Class III–A milk at the Class II and Class III–A differential prices, respectively, plus the pounds of protein at the protein price, plus the pounds of other solids at the other solids price, plus the pounds of butterfat at the butterfat price; and for Class III milk at the protein pounds times the protein price, plus the pounds of other solids at the other solids price, plus the pounds of butterfat at the butterfat price. The value of milk used in Class II and Class III will be adjusted by the appropriate somatic cell adjustment. Payment for 9(c) milk will be based on the producer price differential adjusted for location at the plant of receipt and somatic cells, plus the value of protein, other solids, and butterfat contained in the milk.

Since producers will be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler will be required to supply the producer not only with the information currently supplied, but

also: (a) The pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also.

Land O'Lakes, AMPI North Central Region, and Cass-Clay Creamery filed comments excepting to the requirement that handlers report to their producers the pounds and prices of components for which the producers are being paid. LOL and Cass-Clay stated that there is not enough room on producer checks to report such information. AMPI observed that co-ops can reblend returns to producers, and that it would be confusing to producers to see both minimum component rates and possibly reblended rates on the same pay statement.

The requirement that payment factors be reported to producers when producers are paid currently exists in all of these orders. Addition of the component information is purely a conforming change, and should not be changed from the recommended decision. Administration of these provisions should not change from current practices.

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

The pounds of protein and other solids in Class II and Class III will be determined by multiplying the percent protein or percent other solids in the skim milk of the total producer milk received by the handler times the pounds of skim milk allocated to Class II and Class III.

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

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

A number of the handlers who filed comments on the recommended decision expressed a desire for additional time between approval of the final decision and the effective date of the amendments to allow the industry affected by the order amendments to make a more orderly transition to the new payment system and conduct the necessary informational meetings. They expressed a need for caution and gradualism in effecting the proposed ''revolutionary'' changes in the historic method of pricing milk.

The request for additional time to implement the changes that will be necessary in computer programs, administrative systems and laboratory arrangements is reasonable, and should be accommodated. Accordingly, there will be a longer-than-usual interval between approval of the orders as amended and the effective date of the final order.

Rulings on Proposed Findings and Conclusions

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

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional and certain other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing 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 marketing area, and the minimum prices specified in the tentative 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 tentative 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.

Rulings on Exceptions

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

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Chicago Regional and certain other 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 decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

December 1994 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 Chicago Regional and certain other marketing areas is approved or favored by producers, as defined under the terms of the 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 1030, 1065, 1068, 1076 and 1079

Milk marketing orders.

Dated: August 3, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the Chicago Regional and Certain Other Marketing Areas

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

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the 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 agreement and to the orders regulating the handling of milk in the Chicago Regional and certain other 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. 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 is 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 Chicago Regional and certain other marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on October 25, 1994, and published in the **Federal Register** on November 2, 1994 (59 FR 54952), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to the following modifications:

a. Changes in the treatment of somatic cell adjustments require modifications of reporting requirements in § 1030.30(a)(1) and the corresponding sections of the other 4 orders.

b. Additional changes due to the treatment of the somatic cell adjustment have been made in §§ 1030.50(l), 1030.53(i), 1030.60(a)(6), 1030.61(a)(2), 1030.62(e), 1030.71(a)(2)(iv), 1030.73(c)(2)(vi), and the corresponding sections of the other 4 orders.

c. Changes in the computation of the Other Solids Price have been made in § 1030.50(k), and in the corresponding sections of the other 4 orders.

d. Changes for the purpose of more easily accommodating Class III–A provisions have been made by adding §§ 1030.50(g) and 1030.60(a)(7), deleting 1030.61(a)(3), and making the same changes in the other 3 orders that have Class III–A provisions.

e. Changes for the purpose of conforming with changes to the orders resulting from the Class II pricing proceeding have been made in §§ 1030.53(b) and the corresponding sections of the other 4 orders.

f. Changes for the purpose of conforming with changes to the orders resulting from the M–W replacement proceeding have been made in § 1030.74 and the corresponding sections of the other 4 orders.

g. Changes for the purpose of clarifying the amended order have been made in §§ 1030.71(a)(2)(v) and 1030.75(b) and the corresponding sections of those orders for which such changes are appropriate.

h. Changes in the Upper Midwest reporting date, the date for announcing the producer price differential and the date by which payments must be made to the producer-settlement fund have been made in §§ 1068.30, 1068.62, 1068.71(a), 1068.85 and 1068.86.

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

1. The authority citation for 7 CFR parts 1030, 1065, 1068, 1076 and 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1030.9(a) shall report for each plant of the handler (except if a handler requests and the request is approved by the market administrator, a handler may file a consolidated report for supply plants and a consolidated report for distributing plants); and each handler described in § 1030.9(b) and (c) shall report the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants; and

(ii) Receipts of milk from handlers described in § 1030.9(c).

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

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants, including a separate statement of the net receipts from each supply plant computed pursuant to § 1030.7(b)(4);

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i)

of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(b)(1).

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

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

* * * * *

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

2. Section 1030.31 is amended by revising paragraph (a) to read as follows:

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1030.73(e).

* * * * *

3. Section 1030.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1030.50 Class and component prices.

Subject to the provisions of § 1030.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.40.

* * * * *

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

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

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

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

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

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

(k) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1030.53, including the section heading, is revised to read as follows:

§ 1030.53 Announcement of class and component prices.

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

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

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

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

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

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

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1030.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1030.9(a), (b), and (c), as follows:

(a) Calculate the following values:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1030.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1030.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1030.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1030.30(a)(1) by the percentage of the total producer milk allocated pursuant to § 1030.44(c) that is allocated to Class II and Class III; and

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

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1030.43(d) and § 1030.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(11) and the corresponding steps of § 1030.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1030.61 is amended by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 1030.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler 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 price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1030.60(a)(1), (a)(2), (a)(7), and (b) through (k) for all handlers; and

(2) Add values computed pursuant to § 1030.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment.

* * * * *

7. **Section 1030.62 is revised to read as follows:**

§ 1030.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate:

(f) The average butterfat, protein and other solids content of producer milk; and

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

8. Section 1030.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1030.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk; and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(f) by the producer price differential as adjusted pursuant to § 1030.52 for the location of the plant from which received.

* * * * *

9. Section 1030.73 is amended by revising paragraphs (a), (c), and (d) and adding a new paragraph (e), to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk received from such producer and for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §§ 1030.75 and 1030.86;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer; and

(3) If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before

the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

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

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described under § 1030.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential as adjusted pursuant to § 1030.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (d)(1) of this section;

(vii) Less proper authorized deductions.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

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

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

(5) The total pounds of other solids contained in the producer's milk;

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

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

10. Sections 1030.74 and 1030.75 are revised to read as follows:

§ 1030.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1030.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1030.52(a).

(b) The producer price differential applicable to other source milk shall be adjusted at the rates set forth in § 1030.52(a), except that the adjusted producer differential price shall not be less than zero.

11. Section 1030.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows, and changing the reference ''§ 1030.71(a)(2)(ii)'' in paragraph (b)(1)(iii) to ''§ 1030.71(a)(2)(v)'':

§ 1030.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1030.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1065.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1065.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

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

(ii) Receipts of milk from handlers described in § 1065.9(c).

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

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

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

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1065.40(b)(1).

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

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

* * * * *

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

2. Section 1065.31 is amended by revising paragraph (a) to read as follows:

§ 1065.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1065.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1065.73(e).

* * * * *

3. Section 1065.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l), to read as follows:

§ 1065.50 Class and component prices.

Subject to the provisions of § 1065.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

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

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

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

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

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

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

(k) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1065.53, including the section heading, is revised to read as follows:

§ 1065.53 Announcement of class and component prices.

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

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

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

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

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

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

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1065.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1065.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1065.9(a) with respect to each of its pool plants and each handler described in § 1065.9(b) and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1065.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1065.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1065.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price.

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1065.30(a)(1) by the percentage of the total producer milk allocated pursuant to § 1065.44(c) that is allocated to Class II and Class III; and

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

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1065.43(d) and § 1065.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(11) and the corresponding steps of § 1065.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1065.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (f), to read as follows:

§ 1065.61 Producer price differential.

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

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1065.60(a)(1), (a)(2), (a)(7) and (b) through (i) for all handlers; and

(2) Add values computed pursuant to § 1065.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment.

* * * * *

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the ''producer price differential.''

7. Section 1065.62 is revised to read as follows:

§ 1065.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

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

8. Section 1065.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1065.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk determined pursuant to § 1065.44(c) by the producer price differential as adjusted pursuant to § 1065.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk; and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1065.60(f) by the producer price differential as adjusted pursuant to § 1065.52 for the location of the plant from which received.

* * * * *

9. Section 1065.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1065.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 27th day of the month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(g) for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1065.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to 1065.86 and for advertising and promotion pursuant to § 1065.107; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1065.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1065.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(g) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer or diversion from a pool plant operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

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

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

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

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

(5) The total pounds of other solids contained in the producer's milk;

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

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

* * * * *

10. Sections 1065.74 and 1065.75 are revised to read as follows:

§ 1065.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1065.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1065.52.

(b) For purposes of computations pursuant to §§ 1065.71 and 1065.72, the producer price differential shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

11. Section 1065.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows, and changing the reference ''§ 1065.71(a)(2)(ii)'' in paragraph (b)(1)(iii) to ''§ 1065.71(a)(2)(v)'':

§ 1065.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero;

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1065.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1068.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1068.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

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

(ii) Receipts of milk from handlers described in § 1068.9(c).

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

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

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

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1068.40(b)(1).

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

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

* * * * *

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

2. Section 1068.31 is amended by revising paragraph (a) to read as follows:

§ 1068.31 Payroll reports.

(a) On or before the 22nd day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1068.73(f).

* * * * *

3. Section 1068.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1068.50 Class and component prices.

Subject to the provisions of § 1068.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.20.

* * * * *

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

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

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

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

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

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

(k) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment per hundredweight shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1068.53, including the section heading, is revised to read as follows:

§ 1068.53 Announcement of class and component prices.

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

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

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

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

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

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

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1068.60 and the undesignated centerheading preceding it, the introductory text and paragraphs (a), (f), and (g), are revised to read as follows:

Producer Price Differential

§ 1068.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1068.9 (a), (b), and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1068.43(a) and § 1068.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1068.43(a) and § 1068.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1068.43(a) and § 1068.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.43(a) and § 1068.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.43(a) and § 1068.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price.

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1068.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1068.43(a) and 1068.44(c); and

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

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price

applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1068.43(e) and § 1068.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(11) and the corresponding steps of § 1068.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for a handler described in § 1068.9(c), the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1068.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e), to read as follows:

§ 1068.61 Producer price differential.

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

(a) Combine into one total for all handlers:

(1) The estimated values computed pursuant to § 1068.60 (a)(1), (a)(2), (a)(7) and (b) through (j) for all handlers; and

(2) Add the estimated values computed pursuant to § 1068.60 (a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment.

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the ''producer price differential'' for milk received from producers.

7. Section 1068.62 is revised to read as follows:

§ 1068.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

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

8. Section 1068.71 is amended by revising paragraph (a) to read as follows:

§ 1068.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1068.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler described in § 1068.9(c). In the case of a handler described in § 1068.9(c), less the amount due from other handlers pursuant to § 1068.73(d). The value of producer milk shall be computed as follows:

(A) An amount obtained by multiplying the total hundredweight of producer milk by the producer price differential as adjusted pursuant to § 1068.75;

(B) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(C) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(D) The total value of the somatic cell adjustment to producer milk; and

(ii) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1068.60(f) by the producer price differential as adjusted pursuant to § 1068.52 for the location of the plant from which received.

* * * * *

9. Sections 1068.73, 1068.74, and 1068.75 are revised to read as follows:

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers or cooperative associations as follows:

(a) On or before the 25th day of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a cooperative association:

(1) That is a handler pursuant to § 1068.9(a), at not less than the Class I price for the month at the location of the transferee or transferor plant, whichever is higher, adjusted by the butterfat differential for the preceding month;

(2) That is a handler pursuant to § 1068.9(c), at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month; and

(3) That is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(b) On or before the 4th day after the end of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a producer for whom payment is not being made pursuant to paragraph (a) of this section and who has not discontinued shipping to such handler, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(c) On or before the 11th day after the end of the month, each handler shall pay for milk received and classified during the month from a cooperative association which is a handler pursuant to § 1068.9(a) adjusted at the location of the transferee or transferor plant, whichever is higher, payment shall be determined as follows:

(1) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(2) The hundredweight of Class II milk received times the Class II differential price for the month;

(3) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

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

(5) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(6) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(7) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(8) Less any payment made pursuant to paragraph (a)(1) of this section.

(d) On or before the 18th day after the end of the month, each handler shall make payment as described in this paragraph to:

(1) A cooperative association that is a handler pursuant to § 1068.9(c);

(2) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate;

(3) A producer for whom payment is not being made pursuant to paragraph (d) (1) and (2) of this section.

(4) Payment shall be determined by:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1068.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (a) or (b) of this section.

(e) In making payments pursuant to paragraphs (a) (2) and (3), (b) and (d) of this section, deductions may be made for marketing services pursuant to § 1068.86 and for any proper deductions authorized by the producer. In the event a handler has not received full payment from the market administrator pursuant to § 1068.72 by the 18th day of the month, the handler may reduce pro rata its payments to producers pursuant to paragraph (d) by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this section.

(f) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom it received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and producer;

(2) The total pounds of milk received from the producer;

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

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

(5) The total pounds of other solids contained in the producer's milk;

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

(7) The minimum rate or rates at which payment to the producer is required pursuant to this section;

(8) The rate that is used in making payment if such rate is other than the applicable minimum;

(9) The amount, or the rate per hundredweight, or rate per pound of component, of each deduction claimed by the handler, including any deduction claimed under § 1068.86, together with a description of the respective deductions; and

(10) The net amount of the payment to the producer.

§ 1068.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1068.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a pool plant or delivered to a nonpool plant shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1068.52.

(b) The producer price differential applicable to other source milk shall be adjusted at the rates set forth in § 1068.52, except that the adjusted producer price differential shall not be less than zero.

10. Section 1068.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows:

§ 1068.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero;

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1068.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

§ 1068.85 [Amended]

11. Section 1068.85 is amended by changing the word ''15th'' in the introductory text to ''16th.''

§ 1068.86 [Amended]

12. Section 1068.86 is amended by changing the word ''15th'' in paragraphs (a) and (b) to ''16th.''

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d) to read as follows:

§ 1076.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1076.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

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

(ii) Receipts of milk from handlers described in § 1076.9(c);

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

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

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

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products

and products specified in § 1076.40(b)(1).

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

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

* * * * *

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

2. Section 1076.31 is amended by revising paragraph (a) to read as follows:

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1076.73(e).

* * * * *

3. Section 1076.50 is amended by revising the section heading, introductory text and paragraph (a), reserving paragraph (d), and adding paragraphs (e) through (l):

§ 1076.50 Class and component prices.

Subject to the provisions of § 1076.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

(d) [Reserved]

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

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

(g) [Reserved]

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

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

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

(k) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class and component prices.

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

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

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

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

(d) [Reserved]

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

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1076.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1076.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1076.9(a) with respect to each of its pool plants and each handler described in § 1076.9(b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in § 1076.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1076.43(a) and § 1076.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.43(a) and § 1076.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.43(a) and § 1076.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price; and

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1076.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1076.43(a) and 1076.44(c); and

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by

the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1076.43(d) and § 1076.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a)(11) and the corresponding steps of § 1076.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1076.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e), to read as follows:

§ 1076.61 Producer price differential.

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

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1076.60, paragraphs (a)(1), (a)(2), and (b) through (i) for all handlers;

(2) Add values computed pursuant to § 1076.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment.

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the ''producer price differential.''

7. Section 1076.62 is revised to read as follows:

§ 1076.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk and milk received from a handler described in § 1076.9(c); and

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

8. Section 1076.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1076.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1076.9(c) by the producer price differential as adjusted pursuant to § 1076.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1076.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1076.9(c) by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk and milk received from handlers described in § 1076.9(c); and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1076.60(f) by the producer price differential as adjusted pursuant to § 1076.52 for the location of the plant from which received.

* * * * *

§ 1076.72 [Amended]

9. Section 1076.72 is amended by removing the last sentence.

10. Section 1076.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1076.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1076.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1076.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1076.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(g) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(g) adjusted by the butterfat differential, both for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month,

(iii) [Reserved]

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

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

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

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

(5) The total pounds of other solids contained in the producer's milk;

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

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

11. Sections 1076.74 and 1076.75 are revised to read as follows:

§ 1076.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1076.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1076.52; and

(b) For the purpose of computations pursuant to § § 1076.71 and 1076.72 the producer price differential shall be adjusted at the rates set forth in § 1076.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

12. Section 1076.76 is amended by revising paragraphs (a)(4) and the last sentence of (b)(1)(ii) to read as follows, and changing the reference ''§ 1076.71(a)(2)(ii)'' in paragraph (b)(1)(iii) to ''§ 1076.71(a)(2)(v)'':

§ 1076.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both price to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero;

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1076.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1079.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1079.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

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

(ii) Receipts of milk from handlers described in § 1079.9(c).

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

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants.

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

(iii) Receipts of other source milk;

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(b)(1); and

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

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

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section

shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1079.31 is amended by revising paragraph (a) to read as follows:

§ 1079.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in § 1079.9(a), (b), or (c) shall report to the market administrator its producer payroll for such month in the detail prescribed by the market administrator, showing for each producer the information described in § 1079.73(e).

* * * * *

3. Section 1079.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1079.50 Class and component prices.

Subject to the provisions of § 1079.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.55.

* * * * *

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

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

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

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

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

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

(k) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class and component prices.

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

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

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

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

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

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

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1079.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a), (f), and (g), are revised to read as follows:

Producer Price Differential

§ 1079.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1079.9(a) with respect to each of its pool plants, and each handler described in § 1079.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in § 1079.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1079.43(a) and § 1079.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.43(a) and § 1079.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.43(a) and § 1079.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1079.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1079.43(a) and 1079.44(c); and

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

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1079.43(d) and § 1079.44(a)(7)(i) and the pounds of skim milk and butterfat

subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding steps of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract for a handler described in § 1079.9(c) the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1079.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e) to read as follows:

§ 1079.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1079.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler 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 price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1079.60 (a)(1), (a)(2), (a)(7), and (b) through (j) for all handlers; and

(2) Add values computed pursuant to § 1079.60 (a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of somatic cell adjustments.

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the ''producer price differential.''

7. Section 1079.62 is revised to read as follows:

§ 1079.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk and milk received from a handler described in § 1079.9(c); and

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

8. Section 1079.71 is amended by revising paragraph (a)(2) and reserving paragraph (b), to read as follows:

§ 1079.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1079.9(c) by the producer price differential as adjusted by § 1079.75. In the case of a handler described in § 1079.9(c), less the amount due from handlers pursuant to § 1079.73;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1079.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1079.9(c) by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk and milk received from handlers described in § 1079.9(c); and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1079.60(f) by the producer price differential as adjusted pursuant to § 1079.52 for the location of the plant from which received.

(b) [Reserved]

9. Sections 1079.73, 1079.74 and 1079.75 are revised to read as follows:

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(g) for the preceding month and adjusted pursuant to § 1079.75, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential adjusted pursuant to § 1079.75;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper authorized deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1079.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1079.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has determined that such cooperative association is authorized to collect payment:

(1) On or before the last day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 18th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1079.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(g), applicable at the location of the receiving handler's plant, for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

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

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (c)(1) of this section;

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price applicable at the transferee plant as computed pursuant to § 1079.62(g) and adjusted by the butterfat differential, both for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

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

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

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

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

(5) The total pounds of other solids contained in the producer's milk;

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

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

§ 1079.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1079.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1079.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52.

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the producer price differential shall be adjusted at the rates set forth in § 1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

10. Section 1079.76 is amended by revising paragraph (a)(4) and the last sentence of paragraph (b)(1)(ii) to read as follows, and changing the reference ''§ 1079.71(a)(2)(ii)'' in paragraph (b)(1)(iii) to ''§ 1079.71(a)(2)(v)'':

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero;

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

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 December 1994, _____ hundredweight of milk covered by this marketing agreement.

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

§ _____[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 _____

[FR Doc. 95–19677 Filed 8–11–95; 8:45 am]

BILLING CODE 3410–02–P

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–26–AD]

Airworthiness Directives; Jetstream Aircraft Limited Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Jetstream Aircraft Limited (JAL) Model 3201 airplanes. The proposed action would require repetitively inspecting the main landing gear (MLG) bay forward lower edge wing skin structure for cracks, replacing any cracked doubler with a joggled doubler of improved design to reinforce the area and prevent future cracking, and eventually incorporating these doublers on all affected airplanes. Cracking found at the MLG bay forward lower edge wing skin structure during fatigue testing of the JAL Model 3201 airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent the MLG bay forward lower edge wing skin structure from cracking, which, if not detected and corrected, could cause failure of the wing structure and loss of control of the airplane.

DATES: Comments must be received on or before October 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–26–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Marvin R. Nuss, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No 95–CE–26–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–26–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain JAL Model 3201 airplanes. The CAA advises that cracks may develop in the MLG bay forward lower edge wing skin structure adjacent to the main spar. While