§ 735.40 Excess storage.

* * * * *

(b) * * *

(3) The transferring (shipping) warehouseman must list all forwarded bales on a Bill of Lading by receipt number and weight. The receiving warehouse shall promptly issue a non-negotiable warehouse receipt for each lot of cotton attaching a copy of the corresponding Bill of Lading to each receipt and forward the receipt promptly to the transferring warehouseman (The receiving warehouseman will store each lot intact, attach a header card showing the receipt number, number of bales, and a copy of the Bill of Lading with the individual tag numbers, marks, or identifiers. Such non-negotiable warehouse receipts shall have printed or stamped in large bold outline letters diagonally across the face the words ''NOT NEGOTIABLE.'' * * *

* * * * *

11. Section 735.44 is revised to read as follows:

§ 735.44 Fire loss to be reported.

If at any time a fire occurs at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately the occurrence of such fire and the extent of damage to the Administrator.

12. Section 735.47 is revised to read as follows:

§ 735.47 Certificates to be filed with warehouseman.

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman. All certificates and supporting documentation that form a basis of any receipt issued by the warehouseman shall be retained in the records of the licensed warehouseman until December 31 of the year following the year in which the receipt based on such certificates or supporting documentation is canceled.

* * * * *

13. Section 735.49 is amended by revising the second sentence to read as follows:

§ 735.49 Samples; drawing and marking; how.

* * * Each sample shall be appropriately marked to show the tag number, mark, or identifier of the bale of cotton from which it was drawn and the date of sampling. * * *

14. Section 735.77 is amended by revising paragraph (c) and by adding ''and'' to the end of paragraph (f) to read as follows:

§ 735.77 Contents of complaint.

* * * * *

(c) The name and location of the licensed warehouse in which the cotton is stored, and the tag number, mark, or identifier assigned to each bale of cotton involved in the appeal, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor,

* * * * *

15. Section 735.101 is amended by removing paragraph (b), redesignating paragraphs (c) through (q) as paragraphs (b) through (p), and revising newly redesignated paragraph (j) to read as follows:

§ 735.101 Electronic warehouse receipts.

* * * * *

(j) Prior to issuing EWR's, each warehouseman shall request and receive from the Service a range of consecutive warehouse receipt numbers which the warehouseman shall use for the EWR's it issues.

* * * * *

16. Section 735.102 is amended by revising paragraphs (b), (d) (4), and (f) to read as follows:

§ 735.102 Provider requirements and standards for applicants.

* * * * *

(b) *User fee charges.* Providers shall pay to the Service user fees set by the Service and announced prior to April of each calendar year.

* * * * *

(d) * * *

(4) The provider or the Service may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to the termination.

* * * * *

(f) *Application form.* Application for a provider agreement shall be made to the Secretary on forms prescribed and furnished by the Service.

Signed at Washington, DC, on November 20, 1996.

Grant Buntrock,

Administrator, Farm Service Agency.

[FR Doc. 96–30318 Filed 11–27–96; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO–368–A25, AO–380–A15; DA–95–01]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders and Termination of Proceeding With Respect to Proposals To Amend the Southwestern Idaho-Eastern Oregon Federal Milk Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision adds two counties to the Pacific Northwest milk marketing area and modifies the component pricing provisions of the order. Other proposed amendments addressed at the hearing, including all of those pertaining to the Southwestern Idaho-Eastern Oregon Federal milk order, will not be considered further in this proceeding. The issues involved in those proposals will be addressed in the process of restructuring the Federal milk orders pursuant to the 1996 Farm Bill. Dairy farmer cooperatives will be polled to determine whether dairy farmers favor issuance of the Pacific Northwest order as amended.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

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

These proposed amendments have been reviewed under Executive Order 12988, 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.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Interested persons were invited to present evidence on the probable regulatory and informational impact of the hearing proposals considered in this proceeding on small businesses, or to suggest modifications of the proposals for the purpose of tailoring their applicability to small businesses. However, no one participating in the public hearing or filing comments or exceptions on the basis of the hearing record or the recommended decision contributed any information relevant to the effect of the proposals on small businesses. Information relating to the impact of the amendments contained in this decision have, therefore, been obtained from the market administrator outside the hearing record.

During August 1996, the representative month for determining producer approval of this action, 1,297 dairy farmers were producers under the Pacific Northwest order. Of these, 808 would be considered small businesses, having under 326,000 pounds of milk production for the month. Of the dairy farmers in the small business category, 219 produced under 100,000 pounds of milk, 328 produced between 100,001 and 200,000 pounds of milk, and 261 produced between 200,001 and 326,000 pounds of milk during August.

Of the 489 producers producing in excess of 326,000 pounds during August 1996, 178 produced between 326,001 and 500,000 pounds and 186 produced between 500,001 and 1,000,000 pounds. 125 producers produced at least 1,000,001 pounds during August 1996.

In terms of total dollars, the negative impact on producer returns resulting from the multiple component pricing amendments generally would be less on small producers than it would be on large producers. However, the effect of the amendments on each individual producer would depend on the relative protein, other nonfat solids, and butterfat content of the producer's milk production rather than on the volume of its production.

The effect of the multiple component pricing amendments on handlers, both large and small, would depend on how they use the milk they receive from producers. Handlers' cost of milk used in manufactured products would be reduced by approximately 10 cents per hundredweight, depending upon the component content of the milk. The cost of milk used in fluid products would be unchanged. In addition to butterfat, handlers would be required to report protein and ''other solids,'' instead of nonfat solids, tests of producer receipts. Because most of this testing is done using infra-red analysis equipment, there should be little additional cost connected with the testing and reporting of the protein component.

Of the 23 dairy plants pooled under the Pacific Northwest milk order during August 1996, 15 would be considered to be operated by small businesses on the basis of having fewer than 500 employees. Eight of the pool plants were operated by handlers having fewer than 500 employees.

Expansion of the marketing area to include the two remaining Olympic Peninsula counties would have no effect on producers, and would result in the regulation of no additional handlers. Four handlers who currently distribute fluid milk products into the two counties would be benefitted by a reduction in their recordkeeping and reporting burden. Sales outside the marketing area are required to be reported separately for the purpose of determining a handler's pool status. Addition of these two counties to the marketing area will remove the requirement that these handlers keep separate records and file reports about sales in these counties. Two of the handlers affected would be considered to be small entities.

Prior documents in this proceeding:

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

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

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

Recommended Decision: Issued August 19, 1996; published August 23, 1996 (61 FR 43474).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon 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 Portland, Oregon on July 11–12, 1995. Notice of such hearing was issued on June 15, 1995 and published June 21,1995 (60 FR 32282).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 19, 1996, issued a partial 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, with the addition of six paragraphs at the end of the decision.

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

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

This decision deals only with issues 1 and 6, both of which pertain only to the Pacific Northwest milk order. The remaining issues on which testimony and data were gathered at the hearing, including all of those pertaining to the Southwestern Idaho-Eastern Oregon order will not be considered further in this proceeding. Instead, they will be dealt with in the process of restructuring the Federal milk orders pursuant to the 1996 Farm Bill.

Findings and Conclusions

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

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

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

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

At the present time, milk received by handlers pooled under the Pacific Northwest order is priced on the basis of the pounds of total butterfat, nonfat milk solids used in Classes II and III and the hundredweight of skim milk used in Class I, and the hundredweight of total product used in Classes I, II and III–A. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is distributed to producers on the basis of the total pounds of nonfat milk solids and butterfat in each producer's milk, and each producer's per hundredweight share of the pool's Class I, Class II and Class III–A uses.

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

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

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

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

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

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

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

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

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

Proponent's post-hearing brief stated that the price of milk paid by cheese plants on the basis of components under Order 124 must be reduced to something close to the Order 135 (Southwestern Idaho-Eastern Oregon) price if parity is to exist among cheese plants and if Order 124 cheese plants are to be able to compete with the Idaho plants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The witness stated OWDPA's opposition to incorporating Class I, II and III–A price differentials within the calculation of the other solids price, and supported instead continuing payment of a weighted average differential price to producers on a hundredweight basis. He asserted that Proposal 2 is an attempt to use differential funds to enhance returns on ''other solids'' and would represent an unfair advantage to producers of higher solids milk who may already be receiving additional payments to reflect the unique characteristics of their production for the market. The witness observed that the production of high-solids producers may be the least likely source of milk for those uses which normally generate class price differentials. The OWDPA witness asserted that it is inappropriate to penalize producers serving the Class I market by denying them equal access to funds derived from such sources. He argued that returning Class I or Class II differentials to producers on a hundredweight basis is the only equitable method of apportioning pool proceeds.

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

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

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

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

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

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

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

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

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

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

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

Protein price. The protein price for milk pooled under the Pacific Northwest Federal milk order should be calculated by multiplying the monthly average of 40-pound block cheese prices on the Green Bay Cheese Exchange by 1.32, without including a value for whey protein. This price calculation, included in Proposal 2, would result in a lower protein price than that in Proposal 4. The 1.32 yield factor is obtained from the modified Van Slyke and Price cheese yield formula. Based on milk containing 3.2 percent protein, the formula predicts that for each pound of protein used for Cheddar Cheese-making, 75 percent of that pound of protein yields 1.32 pounds of cheese (with the remaining 25 percent ending up in whey).

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

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

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

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

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

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

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

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

Since the implementation of the Pacific Northwest MCP plan in May 1994, Grade B milk in the M–W region has tested lower for SNF by 0.14 pounds per hundredweight than has Grade A milk in the Pacific Northwest, resulting in a price difference between the two regions of .016 cents per pound of SNF.

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

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

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

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

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

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

Comments and exceptions. Comments on the recommended decision were filed by Darigold and by National All-Jersey, Inc. The Darigold comments included no exceptions to the findings of the recommended decision, and urged the prompt adoption of the amendments. The National All-Jersey, Inc. (NAJ) comments included an exception to the recommended computation of the protein price. NAJ continued to urge that the protein price reflect the value of protein in whey powder as well as in cheese. Aside from the computation of the protein price, NAJ supported the findings of the recommended decision.

NAJ's comments state that although the recommended decision recognizes value in butterfat used in cheese that is not reflected in the butterfat price, that additional value has not been reflected in an adjustment to the protein price. Instead it has been assigned to the ''other solids'' component (primarily lactose) which has no impact on cheese yield at all.

The fact that the molecular matrix formed by protein in cheese allows additional butterfat, priced on the basis of its (lesser) value in butter, to be used in cheese does not justify attributing that extra value to protein. The individual components should be priced on the basis of their own value, as far as is possible while maintaining the basic formula price as the total of the sum of the component values.

As noted above, the protein price determined under this decision will act as a minimum price. As such, it should not include the value of a product (whey protein) that is not produced by all cheese manufacturers. In addition, cheese is not the only manufactured product processed in this marketing area. Nonfat dry milk remains an important use of milk surplus to the fluid needs of this market. Although lactose, the principal ''other nonfat solid,'' has little or no value in the composition of cheese, it is of equal value to protein in the production of nonfat dry milk and its value in that product should be represented in the order's pricing plan. If handlers determine that the protein in the producer milk they receive is worth more to them in cheese manufacture than the order price specifies, they are free to pay over-order protein prices.

Proposals not addressed in this decision. None of the issues included in the hearing record that pertain to the Southwestern Idaho-Eastern Oregon milk order, and the Pacific Northwest proposals dealing with the regulatory status of plants and producer milk will be addressed further in this proceeding. The partial recommended decision stated that these issues would be dealt with in the process of restructuring the Federal milk orders pursuant to the 1996 Farm Bill. Comments filed by Darigold Farms, proponent of some of the proposals not addressed in the recommended decision, fully supported the decision to defer consideration of the issues not dealt with until they can be included in Federal order restructuring under the 1996 Farm Bill. Neither of the two other proponents commented on the decision to defer consideration of the proposals (issues 2 through 5).

It is more appropriate to consider the pooling issues raised in proposals 2 through 5 as part of the process of restructuring the Federal order than to spend the time and effort necessary to determine appropriate levels of pool performance standards for orders that may be consolidated with each other and/or with other Federal order markets within the next few years. The information contained in the hearing record, including the briefs filed on the record, will be considered in establishing pooling standards and plant definitions appropriate to whatever order under which the affected milk will be regulated. Accordingly, this proceeding is terminated with regard to all the proposals to amend the Southwestern Idaho-Eastern Oregon order, and with regard to the proposals to amend the Pacific Northwest order that are not addressed in this decision.

Rulings on Proposed Findings and Conclusions

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

General Findings

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

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

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

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

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

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.

Termination Order

In view of the foregoing, it is hereby determined that the proceeding with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area (Docket No. AO–380–A15) should be and is hereby terminated.

Marketing Agreement and Order

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

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

Determination of Producer Approval and Representative Period

August 1996 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Pacific Northwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Dated: November 21, 1996.

Shirley R. Watkins,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Milk in the Pacific Northwest Marketing Area

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

Findings and Determinations

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

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

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

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

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

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

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

Order Relative to Handling

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

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on August 19, 1996, and published in the Federal Register on August 23, 1995 (61 FR 43474), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

For the reasons set forth in the preamble, the following provisions in

Title 7, Part 1124, are amended as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

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

Authority: 7 U.S.C. 601–674.

2. Section 1124.2 is amended by revising the list of Washington counties to read as follows:

§ 1124.2 Pacific Northwest marketing area.

* * * * *

Washington counties:

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

* * * * *

3. Section 1124.30 is amended by revising paragraphs (a)(1)(i) and (ii), and (c)(1) through (3) to read as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

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

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

* * * * *

(c) * * *

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

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

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

* * * * *

4. Section 1124.31 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

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

* * * * *

(b) * * *

(1) The total pounds of milk received from each producer and the pounds of butterfat, protein and solids-not-fat other than protein (solids nonfat) contained in such milk;

* * * * *

5. Section 1124.50 is amended by revising paragraph (f) introductory text, paragraph (g), and adding a new paragraph (h) to read as follows:

§ 1124.50 Class and component prices.

* * * * *

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

* * * * *

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

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

6. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class and component prices.

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

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

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

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

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

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

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

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

(i) The butterfat differential for the preceding month.

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

Producer Price Differential

§ 1124.60 Handler's value of milk.

* * * * *

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

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

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

* * * * *

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

* * * * *

(h) * * *

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

* * * * *

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

* * * * *

8. Section 1124.61 is amended by revising the section heading, introductory text, and paragraphs (a), (d) and (e) to read as follows:

§ 1124.61 Producer price differential.

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

(a) Combine into one total for all handlers:

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

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

* * * * *

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

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

9. Section 1124.62 is removed, and Section 1124.63 is redesignated as Section 1124.62 and revised, including the section heading to read as follows:

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

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

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

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

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

10. Section 1124.71 is amended by revising paragraph (a)(1), the reference ''§ 1124.73(a)(2) (i), (ii), and (iii);'' in paragraph (b)(1) to ''§ 1124.73(a)(2) (ii) through (iv);'' and paragraph (b)(3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(a) * * *

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

* * * * *

(b) * * *

(3) The value at the producer price differential adjusted for the location of the plant(s) from which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed or such handler pursuant to § 1124.60(k).

* * * * *

11. Section 1124.73 is amended by revising paragraphs (a)(2) (ii) through (vi), (c) introductory text, (c)(1), the reference ''paragraph (a)(2) (i) through (iii) of this section'' in paragraphs (c)(2) and (d)(2) to ''paragraph (a)(2) (i) through (iv) of this section'', (f)(2), and adding paragraph (a)(2)(vii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

* * * * *

(a) * * *

(2) * * *

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

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

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

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

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

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

* * * * *

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

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

* * * * *

(f) * * *

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

* * * * *

§ 1124.74 [Amended]

12. Section 1124.74(c) is amended by revising, in two locations, the phrase ''weighted average differential price'' to ''producer price differential''.

§ 1124.75 [Amended]

13. Section 1124.75 is amended by adding the phrase ''or statistical uniform price'' after the words ''estimated uniform price'' in the second sentence of paragraph (a)(1)(i), and by revising the phrase ''estimated uniform price'' in the first sentence of paragraph (b)(4) to ''statistical uniform price''.

§ 1124.85 [Amended]

14. Section 1124.85 is amended by revising the reference ''§ 1124.60 (h) and (j)'' in paragraph (b) to ''§ 1124.60 (i) and (k)''.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy; Sale of Unguaranteed Portion of Loan

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Pursuant to Section 7(a) of the Small Business Act (Act) 15 U.S.C. 636(a), the Small Business Administration (SBA) guarantees up to 90 percent of certain loans made by banks or other lending institutions. We are soliciting comments on how to proceed with a proposed rule which would permit participating lenders to transfer, under specific conditions, the unguaranteed portions of these loans.

DATES: Comments must be received on or before December 30, 1996.

ADDRESSES: Mail comments to: John Cox, Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, D.C. 20416, Room 8200.