6a. NORTHEAST REGION

The Northeast Marketing Area

The recommended consolidated Northeast order differs significantly from other consolidated orders. In addition to merging three existing Federal milk orders, the Northeast order also calls for expansion in the northern region of New York state, and all currently unregulated areas of the New England states (except Maine).

While the current New England (Order 1) and Middle Atlantic (Order 4) orders have similar provisions for adjusting producer blend prices in a manner identical to plant price adjustments for location, the current New York-New Jersey (Order 2) order employs a “farm-point” pricing method. This decision adopts a plant-point pricing methodology in the consolidated Northeast order. This method is used in every other current marketing area and in every consolidated marketing area. This represents a considerable change in how milk will be priced for those handlers and producers whose milk currently is priced under the provisions of the New York-New Jersey order.

In addition to the different pricing provisions of the three existing orders, other important differences and related provisions need to be addressed in the Northeast regional order that will accomplish the goals of the AMAA. These include what is commonly referred to in the New-York-New Jersey order as the “pass through” provision; the need for providing marketwide service payments in the form of cooperative service payments and balancing payments that currently exist in the New York-New Jersey order and do not exist in either the current New England or Middle Atlantic orders. Additionally, the three current northeast orders also provide for seasonal adjustments to the Class III and IIIA price.

It is fair to observe that the current order most affected by the consolidation is the New York-New Jersey order. In addition to the differences already described, certain terms and provisions of the Northeast order are also different in how they are described and presented but are nevertheless consistent with existing provisions that accomplish the goals of the AMAA. This is less of an issue for those entities that are accustomed to the terminology of provisions used in the New England and Middle Atlantic orders. The following presents a discussion of the recommended order provisions and issues that are unique to the consolidated Northeast order.

Plant

The plant definition for the consolidated Northeast order should differ from that of the other consolidated orders by allowing stationary storage tanks to be used as reload points. This exception to the plant definition is warranted for the

consolidated Northeast order due to certain unique conditions that affect the ability of handlers and haulers to assemble milk in an efficient manner and subsequently transport it to a plant that actually processes milk into finished dairy products, including fluid milk products. This exception would not consider the reload point or facility as a point from which to price producer milk. Rather, milk once assembled would be shipped to a processing plant where it would be priced.

A portion of the Northeast milk supply is derived from some 200 small dairy farms located in Maine. Because much of this state is serviced by secondary and rural winding roads, the current New England order has provided for reload points as a workable solution to the inherent hauling difficulties in transporting relatively small loads of milk from the countryside to reload points and facilities with stationary storage tanks that do not serve as a pricing point. This should continue to be provided for in the consolidated Northeast order. Not to provide this accommodation would adversely affect a substantial number of small producers and the milk haulers that service them.

Pool plant

The pool distributing and pool supply plant definitions of the consolidated Northeast order use the standard order language format used in other orders, combined with performance standards that are adapted to marketing conditions in the Northeast.

The pool distributing plant definition specifies that a pool distributing plant must have 25 percent or more of its total physical receipts of fluid milk distributed as route disposition and that at least 25 percent of route disposition be within the marketing area. The 25 percent level of total receipts distributed on routes is reasonably high enough to establish a distributing plant's association with the fluid milk market. The in-area route distribution performance standard level of 25 percent is adopted because it tends to minimize changing the regulatory status of handlers from their current regulatory status by the Federal order program that may result from the consolidation of existing orders. The 25 percent in-area sales standard is also a reasonable measure for identifying a level at which a distributing plant is sufficiently associated with the marketing area.

As already discussed, the consolidated Northeast order and other nearby consolidated marketing orders do not call for expansion to include certain currently unregulated areas. This includes areas in the states of New York, Pennsylvania, Virginia, and the entire state of Maine. Some distributing plants in these areas are not currently regulated, or are only partially regulated to the extent they have some Class I sales in regulated areas. A 25 percent in-area route distribution level will serve to ensure

or minimize any changes in their current regulatory status under the Federal program that result from consolidation of the three northeast marketing areas into a single new order.

Unit pooling, wherein two or more plants operated by the same handler located in the marketing area can qualify for pooling as a unit by meeting the total and in-area route distribution requirements of a pool distributing plant, is included in the consolidated Northeast order. Providing for unit pooling provides a degree of regulatory flexibility for handlers by recognizing specialization of plant operations.

Due primarily to positions offered by many of the major Northeast dairy cooperatives and their recommendations on appropriate pool supply plant performance requirements, the consolidated Northeast order supply plant performance requirements initially should be set to require that in the months of August and December, at least 10 percent of the total quantity of bulk milk that is received at a supply plant be shipped to distributing plants. For the months of September through November, such shipments by pool supply plants should be at least 20 percent. To the extent that a supply plant has met these performance requirements, no performance requirement is recommended for the months of January through July. However, a supply plant that has not met these performance requirements will need to meet a 10 percent performance requirement in each of the months of January through July in order to qualify as a pool supply plant.

This decision also provides for a system of supply plants for the consolidated Northeast order. This provision allows two or more supply plants operated by the same handler, or by one or more cooperative associations to be qualified for pool plant status by meeting the shipping standards in the same manner as a single supply plant subject to certain conditions. These conditions include written notification to the market administrator of the plants that will be included in the system, how pool status of plants will be affected if individual plants are removed from the system, and provisions for adding plants to the system.

Producer-handler

The producer-handler definition for the consolidated Northeast order limits receipts to no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. While the proposed rule addressed significant limitations on producer-handlers with respect to how it distributes their milk, this decision removes such limitations. The intent of providing an appropriate producer-handler definition was to cause no change in the regulatory status of any known producer-handler currently in operation in the Northeast order region. However, the three orders being consolidated have significant differences in the extent of control a producer-

handler must retain over its distribution practices. The current Middle Atlantic region does not limit the distribution facilities that may be used by a producer-handler. Thus, any limitation with respect to distribution could either cause a current producer-handler to loose such status, or may cause the need for a producer-handler to modify its business practices. Therefore, the producer-handler definition adopted herein removes any restrictions on how it distributes its products.

Also removed from the producer-handler definition is the provision that a producer-handler would not include any producer who also operates a distributing plant if it is requested that their dairy farm and plant be operated as separate entities. Removing this component of the producer-handler definition tends to strengthen the principle that producer-handlers rely primarily on their own farm production to bear the burden of balancing their fluid sales and to find outlets for their surplus production.

Producer

The producer definition of the consolidated Northeast order defines and describes those dairy farmers who are properly associated with the Northeast marketing area and who will share in the benefits that accrue from the marketwide pooling of milk under the order.

The producer definition establishes seasonal limitations for determining if a dairy farmer is considered to be a producer under the order. Basically, the order prohibits a dairy farmer from being a producer under the order during the flush production period if the dairy farmer did not supply the market during the months of relatively short production when milk supplies are needed most to meet fluid demands. Accordingly, the producer definition does not include dairy farmers whose milk during any month of December through June is received at a pool plant or by a cooperative association handler if the operator of the pool plant or the cooperative association caused the milk from such producer’s farm to be delivered to any plant as other than producer milk as defined in the producer milk provision of the Northeast order, or any other Federal milk order during the same month, in either of the two preceding months, or during any of the months of July through November.

Similarly, a dairy farmer would not be considered a producer under the order for any month of July through November if any milk of the dairy farmer is received at a pool plant or by a cooperative association handler if the pool plant operator or the cooperative association caused the dairy farmer’s milk to be delivered to any plant as other than producer milk, as defined in this proposed order, or in any other Federal milk order during the same month.

Producer milk

The producer milk definition of the consolidated Northeast order follows the general structure and format of other consolidated orders. It differs from other consolidated orders in that it requires cooperative handlers to organize reports of producer receipts that originate outside of the states included in the marketing area, or the states of Maine or West Virginia, into reporting units with each unit separately reporting receipts.

No diversion limits are established as they are in other consolidated orders. However, diversions are limited in functional terms. The maximum quantity of milk that a supply plant would be able to divert and still maintain pool plant status would be 100 percent minus the applicable shipping standard. This should provide for a maximum amount of flexibility in marketing milk in the most efficient manner to balance fluid milk needs.

Component Pricing

The consolidated Northeast order will employ a component pricing plan in the classified pricing of milk under the order as previously discussed in the BFP section of this decision. This is consistent with positions taken and proposals offered by major cooperative groups in the Northeast who supply a large percentage of the milk needs of the market. However, on the basis of public comments, the consolidated Northeast order will not contain a somatic-cell adjustor.

In response to the proposed rule, one major association representing primarily milk processors and dairy product manufacturers in New York expressed opposition to employing a multiple component pricing plan in the Northeast order. Their objection to its adoption is that it will be burdensome for handlers. This was expressed primarily as burdens associated with changing from farm-point pricing to plant-point pricing of milk and changes that handlers would need to make for producer pay-roll purposes and in the accounting software that they contend would entail considerable cost outlays. Also expressed in opposition to its adoption was that multiple component pricing does not favor fluid milk handlers, that it is designed primarily for high-solids producers and manufacturers, that it may result in manufacturers having to pay premiums to attract high-solids milk, and that it rewards some producers while reducing pay prices to others.

These objections are unpersuasive. Multiple component pricing is a method for determining, among other things, how producer milk will be priced under the order on a basis beyond just skim milk and butterfat. Components of milk have values that are recognized by the marketplace and producers have expressed the desire for having their pay prices adjusted according to such values. Nevertheless, it does not affect the total per hundredweight value of milk. Additionally, multiple component pricing does not either favor or disfavor fluid milk handlers as

the multiple component pricing plan adopted for the Northeast order will continue to price Class I milk on the basis of skim milk and butterfat.

It should be noted that there are many multiple component pricing plans operated by many handlers in the northeast region. The existence of such plans provides evidence that it is appropriate and reasonable to formalize a multiple component pricing plan for the consolidated Northeast marketing order, especially when there is strong support for it by producers. To the extent that there are so many similar plans, it should not be particularly burdensome for a one-time change by handlers in their accounting systems for determining producer payroll.

Farm-point vs. plant point pricing

At issue in merging the three northeast marketing areas is the use of two distinct pricing methods for milk. The Middle Atlantic and New England marketing areas employ a system of plant-point pricing. This pricing method is also employed in every other marketing area in the Federal order system. Only the New York-New Jersey marketing area uses what is called “farm-point” pricing. This decision adopts plant-point pricing as the pricing method for the consolidated Northeast order.

Plant-point pricing of milk that is pooled under an order prices milk f.o.b. the plant of first receipt. The cost of hauling from the farm to the plant is the responsibility of the producer. When the receiving handler is also the hauler, orders permit the handlers in making payments to each producer to deduct hauling costs up to the full amount authorized in writing by the producer.

As originally employed in the New York-New Jersey order (Order 2), farm-point pricing establishes the price for milk by the zone (distance from market computed from the nearer of the basing points) of the township in which a producer’s milkhouse is located. While termed “farm-point,” farms are grouped by their township location because this is the nearest practicable proxy for actual farm location. In functional terms, when a handler picks up milk at a producer’s farm, the handler takes title of the milk at the time and point of pickup. Accordingly, there were no adjustments in payments to producers to cover any part of the cost of pickup or hauling in moving milk to the handler’s plant. Farm-point pricing fundamentally shifts the cost of transporting milk from the producer to the handler. Farm-point pricing has been in effect in Order 2 since 1961. While the fundamental concept of farm-point pricing has been retained with respect to its overall structure of mileage zones, other order provisions were adopted subsequent to its establishment and modified over time so that farm-point pricing could remain viable while allowing handlers to charge some of the cost of hauling producers’ milk to the plant of

first receipt.

In the decision that established farm-point pricing (25 FR 8610, Sept. 7, 1960), prevailing marketing conditions served to warrant this type of pricing system. At that time, the emergence of bulk-tank milk began to take on a degree of prominence in the milk supply of Order 2. Prior to the adoption of farm-point pricing (1959), about 8 percent of the producers had bulk tanks, accounting for at least 14 percent of the volume of milk associated with the market. About 92 percent of producers delivered their milk at their own expense directly to plants in 40 quart cans. Most of the milk can-delivered was from farms within a radius of not more than 15 miles from the plant. The milk of producers who had converted to bulk tanks, in some instances, was hauled more than 200 miles from farm to city plants, but the majority of bulk tank milk was moved much shorter distances to country receiving plants. The decision cited that in October, 1959, milk was received from 49,719 producers at 691 plants.

When milk was delivered in cans to a handler's plant, the plant was the location at which milk was weighed, sampled for butterfat and quality, and where cans were washed. It was at the plant that milk was accepted or rejected. It was the place where milk was cooled and co-mingled with other individual producer's milk. More importantly, it was the place where control of the milk passed from producer to the plant operator or from which the milk was moved by the plant to other plants for fluid or manufacturing uses. Minimum prices required by the order to be paid by handlers were adjusted for the location of the plant at which milk was received from dairy farmers.

Bulk tank milk brought a set of new factors. When milk was transferred from a producer's bulk tank to the hauler, the point of transfer was also the point where several functions are performed. Milk in a producer's bulk tank has already been cooled, and therefore is not subject to the early delivery deadlines. The weight of milk was determined at the bulk tank, and samples were taken for butterfat and quality. It was also here that the individual producer's milk was rejected or accepted and lost its identity by being co-mingled with other milk.

Numerous problems arose in regulating the handling of bulk tank milk in an order where pooling depended upon direct delivery from the farm to a pool plant and under which minimum class prices and the uniform prices to be paid to producers was reflective of the location of the plant where delivery was made:

1. Administrative problems associated with bulk tank handling arose, particularly where and when milk was regarded to have been received. Bulk tank milk provided the opportunity to deliver milk to different plants, some pool and some nonpool. Where a given tank load of milk was unloaded if it went to two or

more plants of the same or different handlers on the same day was difficult to determine.

2. The incentive arose (because of the administrative difficulty of determining when and where milk was received) for handlers to behave in a way that would result in the maximum exclusion of milk from the pool for fluid use outside the marketing area.

3. The incentive arose for the maximum inclusion in the pool of milk in fluid and manufacturing uses.

4. The incentive and opportunity arose for handlers to select one of several plants for receipt of bulk tank milk, with or without manipulation of hauling charges. This distorted and impinged upon the effectiveness of the minimum price provisions of the order, especially in the case of relatively long hauls of bulk tank milk.

The 1961 decision that established farm-point pricing provided eight scenarios that demonstrated how handlers behaved so as to minimize their pricing obligations to producers. Most of the scenarios arose from the inability to determine when milk was received at a plant. In order to mitigate such circumstances, several things were done. Foremost was the establishment of farm-point pricing on the basis of bulk tank units and the designation of each bulk tank unit as either a pool or nonpool unit and defining the circumstances under which such designations could be changed.

The pricing of milk at the farm eliminated the incentive for handlers to attempt to make it appear that the plant of receipt was other than the plant where milk is actually received and handled. It was made crystal clear that delivery and receipt of bulk milk takes place at the farm. Once acquired by the handler, the plant or plants to which the milk may be delivered depended on decision of the handler, not the producer. Under these circumstances, where the milk was actually used was not a factor to be reflected in the minimum producer price. The operator of the bulk tank unit was defined as the handler and the point of receipt of milk. This entity was responsible for establishing the unit, and it held the responsibility for reporting, accounting, pooling and paying producers. Additionally, the decision concluded that the price at which the farm bulk tank is accounted for to the pool should be the minimum class price adjusted for location of the farm, and that payments by handlers directly to producers be adjusted to reflect all location differentials based on where farms are located and where bulk tank milk was received.

A proposal that would have allowed a tank truck service charge authorized by the producer but not in excess of 20 cents per hundredweight (cwt.), and establish that payments to cooperatives which serve as handlers operating a bulk tank unit

should be at the price reflecting transportation and (the then existing) direct delivery differential applicable at the handler's plant where milk is delivered by the cooperative was not incorporated into the order. At that time, it was found that plant hauling charges averaged nearly 20 cents per cwt. This was offered as rationale for a negotiable 20 cent per cwt. charge by handlers for hauling. Arguments not withstanding, the underlying concepts embodied in farm-point pricing caused the Department to not allow for any hauling deduction by handlers.

Shortly after the implementation of farm-point pricing, the need to amend the order to keep farm-point pricing viable arose. The first occurrence was in 1963. In the 1963 decision (28 FR 11956, Oct. 31, 1963), it was noted that there had been significant changes in marketing conditions that arose from establishing farm-point pricing in 1961. These included the reduction in premiums to bulk tank producers in general; the reluctance of proprietary handlers to receive bulk tank milk from individual producers because of the hauling costs they would incur; the differences in pricing can and bulk tank milk; and a slowdown in the trend of conversion from can milk to bulk tank milk. The 1963 decision, in acknowledgment of changing marketing conditions, incorporated an authorized 10-cent per cwt. charge for hauling under the Order, provided that producers authorized this maximum level in writing.

In the 1963 decision, the Secretary found that allowing for a limited authorized service charge for hauling bulk tank milk at a maximum rate of 10 cents per cwt. was sufficient. This was largely based on the fact that handlers were not then charging for bulk tank pickup and hauling, but rather were paying premiums for bulk tank milk. Additionally, can-milk direct delivered by producers to plants was still very much the norm. While bulk tank milk was growing, it had not yet accounted for a majority of milk pooled on the order.

This decision raised, for the first time with respect to farm-point pricing, the maintenance of orderly conditions and uniform pricing to handlers on all milk priced and pooled under the order. Because bulk tank milk is priced by township zone, (the best proxy for a farm's location) all farms in any particular township have the same value assigned to their milk. However, the decision found it necessary to reflect appropriate uniform pricing of bulk tank milk because it has differing values dependent on the accessibility and relative location of individual farms within the township. With this finding, it was determined that responsibility for hauling to the township pricing point should be borne by the producer with appropriate safeguards to protect the producer. Therefore, a maximum negotiable hauling charge from handlers of 10 cents per cwt. was brought under the order.

By 1970, marketing conditions in the New York-New Jersey market had changed to the point where handlers were authorized to receive a full 10-cent hauling credit for each cwt. of bulk tank milk which was disposed of for manufacturing uses. Additionally, the negotiable 10-cent hauling charge to producers for a handler's cost offset established by the 1963 decision was retained. However, the 10-cent negotiable limit was limited to manufacturing milk. Can-milk at this time represented about 25 percent of the total amount of milk pooled in Order 2, with the balance being bulk tank milk.

Proponents supporting this change to the order claimed, and the decision affirmed, that the manufacturing price for milk in Order 2 was not properly aligned with manufacturing class prices in adjacent Federal orders. In this decision (35 FR 15927, Oct. 9, 1970) the Secretary found that to the extent that Order 2 handlers had borne the transportation costs associated with the pickup and movement of bulk tank milk used in manufacturing from the farm to the plant, Order 2 handler costs exceeded the price which handlers in adjacent order markets were required to pay for milk used in manufacturing. By adopting this transportation credit for handlers, there was no need to adopt other proposals that would have lowered the manufacturing price for milk under the other northeastern orders or lower the Class I price for milk in Order 2 as had been proposed.

By 1977, some 16 years after the adoption of farm-point pricing, marketing conditions had changed again and the issue of providing for more equitable competition among handlers both within the Order 2 market and between other orders took on primary importance. By this time, can-milk was about 3 percent of the market, with the balance represented by bulk tank milk, the near inverse of the marketing conditions prevailing in 1961. The transportation credit that had been established for handlers in the 1970 decision for manufacturing milk was now extended to <u>all milk</u> received by handlers. The transportation credit was increased to 15 cents per cwt., plus an additional 15-cent maximum negotiable credit above the "automatic" 15 cents because total average transportation costs were found to be about 30 cents per cwt. For reasons nearly identical to the 1963 and 1970 decisions, "formalizing" the negotiable hauling charge was not adopted because of needed flexibility in accounting for milk movements from the farm to the township pricing point (42 FR 41582, Aug. 17, 1977). In that decision the Secretary also raised the direct delivery differential from 5 cents to 15 cents per cwt. in the 1-70 mile zone for can-milk delivered by farmers to plants within this zone, and changed the transportation adjustment rate from 1.2 cents per cwt. for each 10 miles to 1.5 cents per cwt. for each 10-mile zone beyond the 201-210 zone, and 1.8 cents per cwt. for

each 10-mile zone within the 201-210 mile zone.

Cooperatives were of the strong opinion that the cost of milk assembly and transportation are the marketing costs of the handler and not producers. However, they also indicated that changes were warranted in the order because of the failure of neighboring markets to adopt farm-point pricing.

Comparative examples of handler price inequities with respect to their cost of milk was amply demonstrated for both intra and inter market situations. With respect to inappropriate price alignment between orders, the competitive relationships between Order 2 and Order 4 were closely examined. On intra-order movements of milk, it was shown that Class I handlers in New York City had a significantly lower procurement cost for direct-ship over bulk tank milk because bulk tank milk from “distant” supply plants had higher transfer and over-the-road hauling costs. Supply plant milk at the city represented about 80 percent of milk receipts at city plants. The inter-market situation demonstrated that handlers in Philadelphia accounted for milk at prices lower than New York handlers. Order 4 handlers were in a position to establish lower resale prices for fluid milk than their competitors in the New York market because the burden of increased hauling costs fell largely on Order 2 handlers. As in 1970, other proposals were denied in light of adopting the 15-cent hauling credit for handlers. These other proposals included lowering Class I and the manufacturing price for milk in the order by 15 cents per cwt.

By 1981, bulk tank milk accounted for nearly the entire milk supply pooled on Order 2 -- about 99.6 percent. As the result of a hearing held in June 1980, in the final decision (FR 46 33008, June 25, 1981) the Secretary again amended the transportation credit provisions of the order. The 15 cents per cwt credit for handlers was retained; however, the 15-cent negotiable transportation service charge was modified to allow handlers to negotiate with producers for any farm-to-first plant hauling cost in excess of the 15-cent transportation credit, plus “the amount that the class use value of the milk at the location of the plant of first receipt was in excess of its class use value at the location where milk was received in the bulk tank unit from which the milk was transferred.” According to the 1981 decision, this amendment would adjust hauling allowances for handlers to more closely relate the location value of milk to the costs incurred in transporting milk from farms and country plants to distributing plants in the major consumption areas of the market. Additionally, the decision indicated that this change was necessary to reflect current marketing conditions and permit a more equitable competitive situation for regulated handlers, both on an intra market and inter market basis. The decision also applied a 15-

cent direct delivery differential for bulk tank milk received at plants within 70 miles of New York City on the basis that a direct delivery differential is applicable to milk received in cans at a plant in the 1-70 mile zone.

In the 1981 decision, the Secretary found that the majority of milk moved to distributing plants in 1979 from the 1-70 mile zone moved directly from farms. This accounted for about 58 percent of the milk in this zone with 48 percent being reloaded. Moreover, the decision found that Order 2 plants located in northern New Jersey received direct shipped milk as did handlers located in Order 4. Thus, inter market price alignment needed to be structured primarily on the basis of handlers obtaining direct shipped milk.

A federation of cooperative associations representing Order 4 producers proposed that Order 2 be amended to return to plant-point pricing, with the direct delivery differential being reduced to 10 cents per cwt, and that the Class I differential at the base zone of Order 2 be increased from the $2.25 level then in effect, to $2.40. This federation of cooperatives believed that this "package" of order modifications would provide for proper price alignment between Order 2 and Order 4. While the decision did apply different transportation rates at a rate of 1.8 cents per cwt. outside the base zone of the Order (201-210) and a rate of 2.2 cents per cwt. inside the base zone, it did not provide for a return to plant-point pricing.

While the decision did not adopt plant point pricing, the decision did acknowledge that the amendments adopted tended to establish plant pricing with respect to the classified prices to handlers. However, farm-point pricing was retained with respect to how producers were paid. With this being the case, the basic substantive difference between the amendments and plant pricing is the impact on the movement of milk to higher-priced zones for manufacturing use. Under plant pricing, the minimum uniform price payable to producers applies at the location of the plant of first receipt and handlers receive a credit from the producer settlement fund at such uniform price. The decision also concluded that plant-point pricing for producers would provide a greater incentive to haul direct-shipped milk to city plants for manufacturing uses, since there would be a credit from the pool for the full amount by which the uniform price transportation differential at the city plant exceeds the transportation differential for the zone of the bulk tank unit. Adopting plant-point pricing for producers would have had the effect of encouraging milk to move long distances to city plants for manufacturing uses when transportation savings could be realized if such milk stayed nearer to manufacturing plants generally located in the milkshed.

Farm-point pricing has undergone many evolutionary changes from its inception in 1961. The original rationale for farm-point pricing, free hauling and the administrative difficulty of determining when milk from bulk tank units was received seems far removed from present-day marketing conditions and the rationale for continuing it. There were a number of years that hearings were necessary to first recognize that the burden of transportation costs rested with handlers. This resulted in handlers being able to successfully argue that with this burden, it became much more difficult for the order to establish and maintain uniform prices to handlers as required by § 608(5)(c) of the AMAA. This is evidenced by the nature of the decisions of 1963, 1970, 1977, and 1981. Much "repair" to other order provisions were also needed to retain farm-point pricing.

Few comments were received in response to the recommended adoption of plant-point pricing by current Order 2 entities. One New Jersey entity thought that its elimination would eventually lead to increased hauling costs borne by producers. Another comment received from a trade organization representing fluid milk processors and dairy product manufacturers, thought that too much emphasis was placed on the "free-hauling" to the detriment of other desirable features embodied in farm-point pricing. Most important was this entity's view that farm-point pricing provides for increased flexibility and in providing for automatic incentives for the most efficient hauls of milk for/by handlers in assembling and moving milk while not affecting the price paid to dairy farmers.

The arguments for retaining farm-point pricing are not persuasive in light of the detailed discussion on the entire life-cycle of its history discussed above. This is not to discount the importance of the certain desirable features of farm-point pricing that led to its adoption and that have been articulated over the years for its retention in the New York-New Jersey marketing area. Nevertheless, farm-point pricing has outlived its intended purpose and the Secretary determines that it will not be retained in a consolidated Northeast order.

The need for a producer-price mechanism

As discussed above, farm-point pricing for producers did provide some rational pricing incentives to promote efficiency within the Order 2 marketing area. This can reasonably be summed up by concluding that farm-point pricing would not provide, as plant-point pricing would, incentives to haul direct-shipped milk to city plants for manufacturing uses, since there would not be a credit from the pool for the full amount by which a uniform price transportation differential at the city plant exceeds the transportation differential for the zone of the bulk tank unit. Adopting plant pricing would have had the effect of encouraging

milk to move long distances to city plants for manufacturing uses when transportation savings could be realized if such milk stayed nearer to manufacturing plants generally located in the milkshed.

In an effort to address the dairy industry structures that have evolved over the past four decades in the three current northeast marketing areas, efforts were undertaken by a major group of dairy farmer cooperatives in the northeast to address what the pricing implications are to producers and handlers as the region moves to a unified plant-point pricing method. This has resulted in a proposal by the Association of Dairy Cooperatives in the Northeast (ADCNE) that include St. Albans Cooperative Creamery, Inc., Land O'Lakes, Upstate Farms Cooperative, Inc., Agri-Mark, Inc., Dairy Farmers of America, Inc., Dairylea Cooperative Inc., and Maryland & Virginia Milk Producers Cooperative Association Inc. These dairy farmer cooperatives account for well over half of the milk that would be pooled and priced under the proposed consolidated Northeast order. Their proposal calls for establishing a producer differential structure that would "overlay" the Class I differential structure that would apply in the consolidated Northeast order.

The structure proposed is a county-based plant-point price structure, providing for 14 zones that accommodate the need to reflect existing and longstanding competitive price relationships among plants, while integrating the farm and plant point pricing systems currently used in Orders 1, 2, and 4 and with currently state-regulated areas that fall outside of the proposed marketing area. Further, the ADCNE proposed prices at the major cities in the Northeast, including Boston, New York City, Philadelphia, Baltimore, and Washington, D.C., included specific Class I differential levels that are somewhat different from those presented in the Option 1A Class I price surface. For example, the recommended decision recommended a New York City Class I differential of $3.15, while ADCNE proposed $3.20. In general, the ADCNE proposal assumed that the Class I differential structure that would be adopted was Option 1A, which is the Class I pricing option they strongly support, and also is the Class I pricing option overwhelmingly supported in public comments received from interested parties from the northeast.

With respect to a producer differential surface, the ADCNE proposed that a debit of 5 cents per cwt. be made to the blend price applicable at non-distributing plants in certain zones. The need for the debit, according to the ADCNE proposal, is to make deliveries to distributing plants somewhat more attractive to producers, while decreasing the amount by which manufacturing plants draw on the marketwide pool for transportation values, offering also that such a debit is economically justified and authorized by the AMAA. According to ADCNE, it is distributing

plants that provide the revenue -- in the form of Class I values -- which form the blend price paid to producers. Deliveries to manufacturing plants do not contribute to increasing the value to the marketwide pool. The debit, according to ADCNE, is a reflection in part of the Order 2 system, which has priced some 50 percent of the milk in the northeast region, and which does not provide location-based transportation payments for movements from farms to manufacturing plants. The ADCNE proposal provides that deliveries to Class I plants are rewarded under this system with an additional 5-cent payment from the pool for the marketwide benefit conferred by a distributing plant's utilization.

For the Western New York State order area, ADCNE also proposed a broad area in which a producer differential of $2.40 per cwt. to producers would be payable on deliveries of producer milk at all plant locations in this area. This portion of the price surface proposed by ADCNE purports to be reflective of the major historical movements of milk from east to west in the region which returned the eastern farm point price to dairy farmers under Order 2's farm-point price system, and that the Western New York State order has not had any location differentials, thereby establishing a "flat" price surface in the area. If those plants, for producer pricing purposes, were zoned lower in value reflecting the westerly and northerly distance from New York City or Philadelphia, ADCNE is of the view that the ability of both distributing and supply plants to attract an adequate supply of milk could be in jeopardy. Furthermore, the expectation that Class I utilization of the proposed Mideast order will be nearly 10 percent higher than the Class I utilization in the Northeast order was also offered in support of the ADCNE-proposed producer differential level in this area.

The ADCNE proposal also recommended producer differential levels in areas that they believed should be included in either the consolidated Northeast order or the Mideast order. Additionally, the ADCNE proposal also addressed producer differential levels at other locations outside of the Northeast region.

Additional supporting and amplifying comments were also provided by Dairylea. These comments supported the major themes offered in the ADCNE proposal for a producer differential overlay to Class I differential levels. Dairylea stated that moving directly to a plant-point pricing method would accentuate "existing inequities and market dysfunctions." Dairylea further commented that a plant-point differential schedule would maintain current inter-plant price differences in the current New England and Middle Atlantic orders, but would worsen them for New York manufacturing plants, many of which are cooperatively owned. Their view of the ADCNE pricing proposal was that it maintains

economic incentives for milk to move to Class I distributing plants, would provide for more balanced procurement equity among competing manufacturing plants, maintains equitable producer pricing when milk is marketed by transporting it from a higher priced zone to a lower priced zone, and provides a structure that allows for adequate blend price levels in all areas of the Northeast milkshed.

Dairylea further commented that under plant-point pricing, existing "near-in" manufacturing plants (plants located in a relatively high differential location) would enjoy a procurement advantage relative to their competitors that are located in a lower-priced location. Dairylea recommended narrowing the price differences between manufacturing plants that compete for producer milk. To do this, Dairylea supported lowering producer differentials for manufacturing plants that are located in high-valued locations and increasing those differentials at manufacturing plants in areas that have lower location values. Dairylea advocated the ADCNE proposal for a producer differential that is 5 cents lower than those of Class I plants when such plants are located in the same pricing zones. Dairylea's view of this design results in maintaining, or slightly increasing, producer differentials applicable at Class I plants and reducing those applicable at "near-in" manufacturing plants. At the same time, this would provide for increasing producer differentials at manufacturing plants in central, western, and northern New York. According to Dairylea, this producer pricing surface would present a more equitable marketing environment than strict plant-point pricing currently employed in Orders 1 and 4, while at the same time not threatening the viability of manufacturing plants in those areas of a consolidated Northeast marketing area.

A major theme of Dairylea was its view that Federal milk orders and their provisions should foster an environment under which manufacturing plants are provided equal cost and procurement ability, and not disfavor such manufacturing plants located in high milk production areas where Class I differentials are lower. Dairylea also stated that the final rule of 1991 that realigned intra-order prices in Order 2 resulted in harm to producers in northern and western New York. While it is not appropriate to specifically revisit this issue and decision here, official notice is taken of the final decision (55 FR 50934, December 11, 1990) that realigned Class I differentials in the three existing northeast marketing areas.

Comments supporting the ADCNE proposal for a producer pricing surface were also offered by Upstate Farms Cooperative, Inc. The Upstate Farms views served to reiterate the major themes developed in the ADCNE proposal.

Agri-Mark, a part of ADCNE, filed separate and dissenting

views on the ADCNE proposal. Conceptually, Agri-Mark noted that plant and farm-point pricing are different, but noted further that the differences are not always unfavorable. Agri-Mark submitted that under plant-point pricing, all producers shipping to the same plant receive the same minimum order blend price regardless of where their farm is located. Under farm-point pricing, farmers shipping to the same plant receive different prices under the order depending on where their farm is located. Farms closer to New York City, Agri-Mark noted, receive a higher price than farms farther from the city, even though their milk ends up in the same place.

Agri-Mark noted that most manufacturing plants, especially cheese plants, were built in the northeast prior to the adoption of farm-point pricing and not in response to it. Rather, says Agri-Mark, these plants were built at their present locations because of their proximity to abundant milk supplies. The procurement problems for manufacturing plants that Order 2 entities alert us to did not arise in New England manufacturing plants under plant-point pricing even though these plants were located as far north as possible within the milkshed for New England.

Simply put, Agri-Mark believes that rather than decreasing the differential between manufacturing plants and city distributing plants, an increase is justified. They are also of the opinion that manufacturing plants located far from higher-priced zones will maintain an advantage even with the adoption of strict plant-point pricing because this milk does not need to travel long distances to reach manufacturing plants. Agri-Mark indicates that the ADCNE proposal would cause Agri-Mark producers to receive lower prices that competitive price relationships do not warrant.

The Agri-Mark view of Federal milk marketing orders differed substantially from the views expressed by Dairylea. Agri-Mark stated that the role of Federal milk marketing orders is to treat all producers equitably relative to how their milk is used and not to weaken price integrity by causing destructive competition among producers for sale to Class I outlets. This is best accomplished, according to Agri-Mark, with appropriate pooling requirements and Class I differentials to satisfy the Class I demands of the market. Agri-Mark fears that if the regulatory pricing plan gives a distributing plant an advantage over a cooperative manufacturing/balancing plant in the same zone, that plant can use this advantage for itself instead of passing it along to farmers to offset transporting their milk to market.

Lastly, in their opposition to the ADCNE proposal, Agri-Mark noted that no manufacturing plant has been built in any city zone for decades, noting that the only significant plants in such areas

for the northeast are older plants producing nonfat dry milk and butter and which serve to balance the Class I needs of city markets, concluding that such plants are there for common sense and efficiency reasons. In support of this observation, Agri-Mark noted that existing Class I differentials have not been adjusted to more fully account for increases in hauling costs.

A producer pricing differential structure that differs from a Class I differential is denied. The issue before the Department is to minimize the impact of the change from farm-point to plant-point pricing on producers as part of adopting plant-point pricing for the new consolidated order. The change to plant-point pricing will affect approximately one-half of the producers in the consolidated marketing area and is a significant departure from historical methods of distributing the revenue that accrues from classified pricing to producers whose milk is pooled under the current New York-New Jersey order. Plants, however, will not experience significant change since plants currently regulated under Order 2 already account to the marketwide pool at the Class I location differential value. The issue then, tends to focus on how to pool and distribute the revenue as equitably as possible to producers. Of the few public comments that were received on this issue in response to the January 30, 1998, proposed rule, it was requested that this issue be reconsidered. However, no new or persuasive arguments were advanced that would cause a change in denying this proposal.

Competitive equity between manufacturing plants is already ensured by the classified prices applicable to handlers who operate such plants. In fact, this decision adopts uniform Class III and Class IV prices that are applicable for all locations. The more appropriate issue this proposal seems to address is that manufacturing plants are often cooperatively owned. All entities, including cooperatives in their capacity as handlers, account to the marketwide pool at the manufacturing price for milk received at their plants. The price paid to producers is the blend price for all milk pooled on the market that was priced according to its use. Cooperatively owned manufacturing plants located in higher priced areas will pay a higher blend price to producers who deliver milk to that location provided they meet the performance requirements for being pooled, thereby demonstrating the appropriate degree of association with the market. In this regard, it is worthy to note that not all manufacturing plants in the high-valued zones in the New York marketing area are pool plants. Blend prices are adjusted everywhere according to the location value of the plant. Adjusting producer blend prices on the basis of whether or not milk was delivered to a distributing plant or to a manufacturing plant seems to create a form of producer price discrimination that classified pricing and the

mechanism of marketwide pooling and its related provisions attempt to mitigate. Such marketwide pooling provisions provide a degree of equity to producers in the form of a uniform blend price adjusted only for the location value on all milk pooled on the market. Classified pricing and marketwide pooling have served well to mitigate the price competition between producers seeking preferred higher-valued outlets for their milk, while at the same time ensuring handlers uniform prices, adjusted only for location, in the prices they pay for milk.

Marketwide service payments

Cooperative Service Payments — Cooperative service payments, as part of a marketwide service payment provision for the consolidated Northeast order, should not be included in a consolidated Northeast order. As originally proposed by ADCNE, a 2-cent per cwt. payment would be made out of the marketwide pool to cooperatives and non-cooperative entities for funding information-gathering and services related to amending Federal milk marketing order provisions that would be of marketwide benefit. Cooperative service payments of this sort currently are provided for under terms of the New York-New Jersey order, but are not provided for in either the New England or Middle Atlantic orders. However, under the New York-New Jersey order, cooperative service payments are made only to qualified cooperatives that meet the conditions specified under the order and does not provide for such payments to non-cooperative entities. In comments provided in response to the proposed rule published on January 30, 1998, the ADCNE withdrew this component of their marketwide service payment proposal.

Rationale offered in support of a cooperative service type payment to cooperatives and non-cooperative entities was based on recognizing that in a regulatory pool structure, private parties provide important services that are of benefit to everyone involved in the marketwide pool, including the promulgation, amendments to, and administration of the order. Not to provide a mechanism for the recovery of a portion of the expense involved in providing such services would disadvantage those incurring these expenses while everyone in the market benefits as a result of these services.

Qualification criteria presented for entities eligible to receive this payment included a demonstration to the market administrator that it provides information with respect to market order prices and marketing conditions, that it has retained legal and economic staff or consulting personnel available to participate in marketing order amendatory proceedings, to consult with the market administrator with respect to marketing order issues, and that the entity pool at least 2.5 percent of the order’s total milk volume.

There is not a compelling reason to adopt this sort of compensatory plan to reimburse those entities that incur these costs. Market administrators and their staffs make themselves available to meet with, discuss, and aid in formulating positions that reflect marketing conditions as a normal part of their duties. Additionally, there are numerous provisions in the order that require as a matter of course the issuance of reports, prices, and other information that affect all marketing order participants and that provide a service to the entities affected by the regulatory plan of the order. Finally, no other current or consolidated order provides for such cost compensation. Cooperative and proprietary handlers in the New England and Middle Atlantic marketing areas included in the consolidated Northeast order, as well as entities in all other marketing areas have not experienced or have demonstrated any of the harm or "disadvantage" that arises, or may arise, if such costs are not shared by the entire pool of producers in the marketing area. This decision can only assume that industry participants that have an interest in developing the promulgation and amendments to marketing orders would be willing to do so at their own expense. The positions and arguments offered are largely issues of the self-interest of entities. As such, self-interest may or may not be of marketwide benefit.

Balancing Payments — A marketwide service payment plan which would compensate qualified handlers that perform market balancing should not be included in the consolidated Northeast order at this time.

The original proposal for providing balancing payments from the marketwide pool was intended to reflect the additional costs that handlers incur in balancing the Class I needs of the market and clearing the market of temporary milk surpluses. According to the proponents, these balancing costs are not fully recoverable from Class I handlers; however, the benefit that results from this service being provided is a benefit of all producers in the market.

Handlers that incur the costs would be those handlers that would receive partial cost reimbursement of 4 cents per cwt. Cooperatives would be eligible to form common marketing agencies or federations for purposes of qualifying for balancing payments. Such handlers would include those who: 1) demonstrate ownership or operation of a balancing plant with the capacity to process a million pounds of milk per day into storable products such as cheese, butter, and nonfat dry milk and who also represent at least 2.5 percent of the total volume of milk pooled under the order; 2) have under contract, and the obligation to pool on a year-round basis, at least 8 percent of the market's milk volume; 3) own a balancing plant that must be made available to other

handlers or cooperatives at the request of the market administrator; 4) qualify to provide pool producers with a temporary market for their milk for up to 30 days at the request of the market administrator; and 5) demonstrate to the market administrator that their utilization of milk in Class I uses is greater than the minimum shipments required for pool plant qualification under the order.

ADCNE modified the above described original proposal for balancing payments. The modified proposal calls for a balancing payment of 6 cents per cwt. and revised criteria for those entities eligible to receive balancing payments from the marketwide pool. As with their original proposal, they are of the opinion that a system of reimbursement is necessary to offset costs associated with absorbing, or balancing, the daily, weekly, and seasonal fluctuation in Class I demand in the market. Balancing payments would be made on qualifying pounds of pooled milk delivered to manufacturing milk plants. Additionally, this milk would be subject to a "call" by the market administrator during times when there is additional need for milk by distributing plants in the market.

The modified proposal would provide balancing payments to any handler in any month in which the handler's deliveries of milk to distributing plants are greater than 20 percent but less than 65 percent of its total pooled milk volume. According to ADCNE, the lower percentage requires handlers to maintain a constant, significant association with the Class I market and is higher than the level required by other handlers for pooling qualification. Additionally, the 65 percent, says ADCNE, serves to limit participation to handlers with substantial quantities of reserve milk not dedicated to the Class I market. Qualifying deliveries would be determined on a "net shipment" basis to prevent the reshipment of milk deliveries that would otherwise qualify for balancing payments. Payment would be made on the reserve volumes of milk. In the event that the market administrator issues a "call" for additional milk deliveries to distributing plants, the volume of milk delivered to non-distributing plants in the prior month by handlers subject to the call would be used as a basis for requiring handlers to make additional shipments to distributing plants on a pro-rata basis. For example, if participating handlers in the prior month had delivered 100 million pounds of milk to non-distributing plants and the market needed 10 million pounds of milk delivered to distributing plants, each handler subject to the call would be obligated to deliver an additional volume of milk to distributing plants equal to 10 percent of its deliveries to non-distributing plants in the prior month. ADCNE viewed their balancing payment provision as establishing a "standby pool" of milk among qualifying handlers who elect to

participate. Participation in the pool would entitle the qualified handler to a payment of 6 cents per hundredweight, determined monthly, on the handler's deliveries to manufacturing plants, but would also obligate the handler to deliver additional quantities in the event of a "call" for up to one year after a balancing payment has been received.

According to ADCNE, the costs involved with matching the demands of the Class I market with the total production of milk are costs which marketing handlers, proprietary and cooperative alike, must absorb. These costs are neither fully reflected in Class I prices, nor in over-order handling charges and are not uniformly shared throughout the market, while the Class I value is shared equally within the marketwide pool, says ADCNE. The unique structural characteristics of the northeast's markets and the preponderance of producers delivering directly to proprietary Class I handlers on a regular basis, says ADCNE, prevents supplying handlers from recovering these costs from Class I handlers.

According to the ADCNE, the proposed Northeast marketing area will comprise the largest Class I market in the Federal order system and also represent the largest pool in the country in terms of producer milk. According to ADCNE, monthly Class I sales will be approximately 900 million pounds and will be more than 65 percent greater than the next largest consolidated order's Class I pool. ADCNE says this huge Class I market presents significant challenges to its suppliers with respect to balancing daily, weekly and seasonal needs and sets the Northeast order apart from other orders.

The ADCNE offers additional justification for balancing payments, in part, by drawing on the example of other orders providing for marketwide service payments for offsetting the additional costs of moving milk from assembly areas and for plant-to-plant movements of milk. ADCNE notes that such payments from the marketwide pool are provided for in recognition of the marketwide benefit that accrues to all market participants when the costs of milk assembly and the movement of milk are shared by all producers.

Other public comments similarly articulated the uniqueness of the current New York market and its role as part of the consolidated Northeast marketing area. One commenter observed that the Northeast marketing area, and New York in particular, is unique in terms of the mix of producers who are represented by cooperative membership and those that are not. According to this commenter, about 65 percent of the producers in New York are represented by cooperatives, while the remaining 35 percent are independent producers to the market. Further, noted this commenter, it has been cooperatives that have, since the 1960's,

taken over the role of balancing the Class I needs of the market by moving milk around on a daily basis between distributing and manufacturing plants. According to this commenter, such was and should continue to be an important factor to consider for the larger consolidated market that expects to need about two thirds of its milk supply balanced between an expected 45 percent Class I and about 20 percent Class II utilization. This commenter was of the opinion that markets characterized by very high cooperative membership already spread the costs of balancing uniformly over a large pool of producers.

All other public comments supported inclusion of balancing payments in the consolidated Northeast order. These comments similarly called attention to the unique structure of the Northeast marketing area, primarily in terms of the number of producers represented by cooperatives and the relatively high number of independent milk producers and the unequal costs that would be incurred by producers who incur the additional costs of balancing the fluid needs of the market. While there was specific recognition of the important role that cooperatives play in balancing the market, it was generally thought that if balancing payments would be provided for in the consolidated order, they should be made available to cooperative and proprietary handlers alike.

The consolidated Northeast marketing area is expected to retain a unique feature of the existing New York-New Jersey marketing area -- a relatively high percentage of producers who are not members of cooperatives. As of December 1997, the current New York-New Jersey market had about 68 percent of its milk and about 69 percent of its producers represented by cooperatives. In the consolidated Northeast marketing area, the expected amount of milk represented by cooperatives will increase to about 76 percent with about 75 percent of the number of producer represented by cooperatives. While the percent of milk volume and number of producers represented by cooperatives is growing, the volume of milk and number of independent producers remains significant. This is especially important given the role of cooperatives who operate manufacturing plants and who provide and incur the costs associated with balancing the Class I needs of the market. Without providing for some cost offset for balancing, about 26 percent of the milk and about 25 percent of the producers would not be sharing in the burden of balancing the market.

The revised criteria presented by the ADCNE seem reasonable in determining which handlers would be eligible to receive balancing payments from the marketwide pool. The qualification standards for receiving balancing payments (to any handler that ships at least 20 percent, but less than 65 percent of the total volume of milk pooled on the market to distributing plants) also

seems reasonable in light of the order's pooling standards. Further, determining qualifying shipments on a "net shipment" basis is similarly a prudent safeguard to reasonably assure that milk is delivered into, and not shipped back out of distributing plants and supply plants for the sole purpose of qualifying for balancing payments. It also provides for ensuring a temporary market (up to 31 days) to any producers who would have lost their normal market outlet as a condition for eligibility in receiving balancing payments.

However, the revised proposal would have payments made only on milk used in manufacturing products. In practice this would mean that handlers with the greatest volume of milk going to manufacturing plants would receive a larger share of balancing payments while at the same time would be required to provide the least additional Class I milk to the market. Observed another way, the less commitment a handler has to the Class I market, the larger the balancing payments. Additionally, basing balancing payments criteria on only manufacturing milk seems to provide a disincentive to handlers in serving the Class I market needs because handlers that would provide additional Class I milk would lose 6 cents per cwt. Lastly, basing balancing payments on just manufacturing milk seems to provide an unwarranted monetary incentive to cause additional milk to associate with the marketwide pool for the sole purpose of receiving an additional 6 cents per cwt.

In addition to the above concern on limiting balancing payments to manufacturing milk, the reasons for not recommending balancing payments for the consolidated Northeast order articulated in the proposed rule were not all sufficiently addressed. The proposed Northeast order consolidates two current orders, New England and the Middle Atlantic, that do not currently provide for balancing cost offsets to handlers for such purposes. These markets have not experienced any undue harm or disadvantage by not providing for this sort of cost offset. To the extent that further analysis on the need for balancing payments can rest upon the high percentage of independent milk that is expected to be represented in the consolidated Northeast order, such analysis does provide a legitimate and important factor in further considering the appropriateness of a balancing payment provision.

The proposed rule also indicated that balancing payments should not be adopted because an appropriate class price has been provided for market clearing purposes -- the Class IIIA price. It is a price that is applicable in all current northeast orders, and is continued in this decision as the Class IV price. While these two class prices are not the same, (as explained in the BFP section of this decision) they are conceptually similar in that handlers have been provided with a market clearing price and

further compensation beyond this does not appear to be warranted.

Lastly, the proposed rule indicated that the original 4-cent per cwt. balancing payment level was unexplained with respect to how adequately it tends to offset balancing costs. The same is also observed for the modified payment level of 6 cents per cwt. Subsequent to the publication of the proposed rule, public comments received in letters and from public forums and "listening sessions" did result in being able to extrapolate a single cooperative entity's cost for balancing, however, this measure may or may not be appropriate for characterizing or determining the proposed payment level.

The "pass-through" provision

Currently, the New York order provides for what is commonly referred to as the "pass-through" provision. The intent of this provision is to provide for a degree of competitive equity for handlers that must pay at least the order's Class I price for milk so that they can compete with handlers in unregulated areas that do not. This provision has been in place in the New York order since 1957 and is a part of how the order allocates and classifies milk. In functional terms, the pass-through provision removes the amount of milk distributed outside of the marketing area from the full Class I allocation provisions of the order, thereby providing a degree of price relief to handlers who compete with other handlers who are not held to the pricing provisions of the order in unregulated areas. Regulated New York handlers currently compete with unregulated handlers in the unregulated areas of Pennsylvania and other areas in the northeast region.

The current provisions of the New England and Middle Atlantic orders do not have this provision although they too adjoin similar non-Federally regulated areas. Handlers regulated by these two orders also compete with these same unregulated handlers for Class I sales. The merging and expansion of these three northeast orders continue to result in areas that adjoin the recommended Northeast order that would not be regulated.

While there were proposals both for and against retaining a pass-through provision in the consolidated order, the need for it was expressed on the basis of the extent to which the Northeast consolidated order would be expanded to include currently unregulated areas. Generally, handlers support continuing to provide for a pass-through provision, and this position can only be considered reinforced given the limited degree of expansion of the consolidated Northeast order. If the entire Northeast region would fall under Federal milk order regulation, the need for the pass-through would be moot. These observations remain valid in light of the public comments received in response to the proposed rule published on January 30, 1998.

The pass-through provision, notwithstanding the limited

extent of marketing area expansion, or in light of few public comments supporting its continuation, is not included in the consolidated Northeast order for the same compelling reasons articulated in the proposed rule published on January 30, 1998. Class I prices charged to handlers that compete within the marketing area for fluid sales are determined by the location value of milk delivered to their plants. The Class I differential structure adopted in this decision recognizes the location value of milk for Class I uses and is designed to cause milk to be delivered to bottling plants to satisfy fluid demands. Accordingly, handlers located in high-valued pricing areas will be charged for the location value of Class I milk at their plant locations regardless of whether or not they compete with other handlers for fluid sales in areas where the location value of Class I milk at these plant locations are lower. This location value pricing principle is extended to handlers competing for sales with handlers who do not pay the same price for Class I milk in unregulated areas.

Seasonal adjustments to the Class III and Class IV prices

The three northeast orders to be consolidated into a single Northeast order currently provide for a seasonal adjustor on Class III and Class IIIA milk prices. These provisions have been a part of these three orders for more than 30 years. Prior to the adoption of the Minnesota-Wisconsin (M-W) price series in the mid-1970's, these markets established the equivalent of the modern Class III price on the basis of what was known as the U.S. Average Manufacturing Grade Milk Price Series (U.S. Average Price Series).

The U.S. Average Price Series was a competitive pay price series, but differed from the M-W in that it recorded price averages consistently below the M-W that was rapidly being adopted elsewhere in the country as the appropriate price for surplus uses of milk and used as a price mover for higher-valued class prices. Given the national marketplace in which surplus dairy products compete for sales, a mechanism was needed to align these two differing price series. Accordingly, seasonal adjustments to the Class III price were developed and made a part of these orders. These seasonal adjustors were found not only to be warranted for better price coordination between these two price series, but also served to encourage handlers to dispose of the maximum amount of milk in Class I uses.

By the mid-1970's, the M-W was adopted to replace the U.S. Average Price Series and the seasonal adjustors were retained. The reason for retaining these adjustments were to encourage handlers to make more milk readily available for fluid use in the short production months and to facilitate the orderly disposition of excess reserve milk supplies in flush production months. Although some regional price disparity was acknowledged to result

from retaining these adjustments, they were nevertheless retained because there was no evidence that providing for such adjustment had led to any interregional problems in the marketing of the reserve milk supply.

Agri-Mark, a major cooperative in the northeast, proposed that seasonal adjustments continue in the consolidated Northeast order. The main thrust of their proposal was that markets with relatively high Class I use create a burden on the manufacturing sector in their areas. They view seasonal adjustments as also assisting in sending the proper economic signal to manufacturers. This is important, according to Agri-Mark, because the seasonal adjustment provides an economic "disincentive" for Class III and Class IV manufacturers to use milk in the fall when less producer milk is available and additional supplies are needed for Class I uses.

Seasonal adjustors to the Class III and Class IV prices are not incorporated into the provisions of the consolidated Northeast order. This decision provides a much more permanent replacement for the current BFP. Because Class III and Class IV product price formulas are incorporated in all consolidated orders, there is no compelling reason offered to contemplate continuing seasonal adjustments to Class III and Class IV prices. They are also not provided in orders that are expected to have Class I utilizations similar to that anticipated in the consolidated Northeast order and who similarly have important manufacturing activity.

6b. SOUTHEAST REGION

The 3 proposed orders for the Southeastern United States--Florida, Southeast, and Appalachian--are faced with a different set of marketing conditions than other orders. The Southeastern United States is one of the fastest growing areas of the country in terms of population growth and is the most deficit area in terms of milk production per capita. From 1988 to 1997, the population of the 12 Southeastern states rose from 57.9 million to 65.1 million.

While population has been increasing in the Southeast, milk production in the 12 Southeast States (i.e., Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia) has been decreasing--from 15.4 billion pounds in 1988 to 13.6 billion pounds in 1997. The net result of these opposite trends is a widening gap between the local supply of milk for fluid use and the demand for such milk. This is evident by the drop in per capita milk production for these 12 states, from 265 pounds per capita in 1988 to 210 pounds per capita in 1997.

Unlike other parts of the country, the Southeast has few facilities for handling surplus milk. Consequently, surplus production during the months of January through June must, in some cases, be shipped hundreds of miles for processing at manufacturing plants generally to the north. For this reason, the provisions in these orders must be aimed at the twin goals of encouraging supplemental milk to move to these markets during the short production months--generally July through December--and they must also discourage supplemental milk from moving to these markets when it is not needed in the flush production months--generally January through June--because such milk would simply displace local milk and increase the cost of disposing of such milk for surplus use.

Very few comments were received with respect to the order provisions proposed for the Appalachian, Florida, and Southeast orders. Most of the comments that were received endorsed the proposed provisions. A few comment letters stated that seasonal pricing provisions should be included in the Southeast orders and a few comment letters suggested that the Class I price mover for the Southeast should be a 12-month moving average rather than the proposed 6-month moving average. These comments are discussed in the pricing sections of this final decision. Other comments received are discussed below.

Transportation credits. As a result of the need to import milk to the Southeast from many areas outside the Southeast during certain months of the year, transportation credit provisions were incorporated in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville orders in August 1996. These

provisions provide credits to handlers who incur additional costs to import supplemental milk for fluid use for markets during the short production months of July through December. The provisions restrict the use of credits by handlers to milk received from producers and plants located outside of the marketing areas. The credits are also restricted to milk received from producers who supply the markets only during the short season and are not applicable to milk of producers who supply the market throughout the year.

Following the initial implementation of transportation credits in August 1996, the provisions were modified in a final decision issued on May 12, 1997. The amendments became effective on August 1, 1997.

Transportation credit provisions are retained in the new Southeast and Appalachian orders but have not been included in the Florida order.

Only a few comments filed in response to the proposed rule specifically addressed the issue of transportation credits. Two producers requested that transportation credits be removed from the orders because they have not performed as expected. A handler who supported transportation credits for the Southeast and Appalachian orders suggested that the provisions also be included in the Florida order.

In the past 5 years, dairy cooperatives representing the large majority of producers in the Southeast have strongly supported transportation credit provisions for the Southeast and Appalachian orders because the provisions have been helpful in obtaining supplemental supplies of milk for fluid use and in sharing the costs associated with those supplemental supplies more equitably among all handlers in the market. They have not, however, been supported by the 2 cooperative associations which supply the Florida market and there is no indication that such provisions are needed to more equitably share the costs of supplying that market with supplemental milk. There was no indication from the public comments that were received that these cooperative positions have changed.

With the addition of northwest Arkansas and southern Missouri to the Southeast marketing area, milk from these 2 areas will be ineligible for transportation credits under the Southeast and Appalachian orders. This change in the application of the credits is consistent with the logic for incorporating these 2 areas in the Southeast marketing area. Specifically, northwest Arkansas and southern Missouri are regular sources of supply for handlers in the Southeast marketing area and, in addition, include plants that compete for sales with handlers regulated under the Southeast order. Accordingly, the producers in these 2 areas will share in the pool proceeds of the Southeast market. Of course, since

transportation credits are designed to attract supplemental milk to the market for fluid use from producers who are not regularly associated with the market, transportation credits should not apply to a farm or a plant in northwest Arkansas or that portion of southern Missouri that is to be included in the Southeast marketing area.

Two other changes have been made in the transportation credit provisions of Orders 5 and 7. First, at the present time, if a dairy farmer is a producer under the order for more than 2 months of the January through June period and more than 50 percent of the dairy farmer's milk is received as producer milk under the order during those 2 months, the dairy farmer's milk is ineligible for transportation credits during the following months of July through December. This rule should be modified.

Experience with the transportation credit provision in the Southeast indicates that the months of January and June are transition months. In some years, supplemental milk is needed during those months, but in other years it is not. Indeed, it is for this reason that the market administrator has been given the authority to extend transportation credits to these months upon finding that the extension is necessary to assure the market of an adequate supply of milk for fluid use. When the market administrator makes a finding that January or June should be included in the transportation credit period, these months are excluded from the restriction of the orders, as described above. Sometimes, however, in these 2 months it is not apparent that supplemental milk will be needed until after the month begins. In this case, it is too late for the market administrator to include these months in the transportation credit period, but it is not too late for a cooperative association or handler needing supplemental milk from arranging for such milk to be brought into the market. The problem in doing so, however, is that without being very careful it is easy to disqualify a dairy farmer's milk for transportation credits by receiving producer milk from the dairy farmer for more than 2 months or by exceeding the 50 percent limit.

In view of this problem, the months during which a dairy farmer may not be a producer have been changed from January through June to February through May. This will provide greater flexibility to receive supplemental milk when needed without disqualifying a dairy farmer's milk from transportation credits.

The other change that has been made to the transportation credit provisions has to do with the computation of the credit with respect to milk shipped directly from producers' farms. At present, the market administrator must determine an origination point for this milk and once the point is determined ascertain what the Class I differential, adjusted for location, would be at

that point. If the origination point is within a Federal order marketing area, the applicable Class I differential is the one that would apply at the origination point under the order regulating that area. However, if the origination point is in an unregulated county, a Class I differential, adjusted for location, is computed based upon the provisions of the order receiving the milk (i.e., at present Order 5, 7, or 46).

The different methods now used to compute the Class I differential at the origination point for a load of milk occasionally leads to very different transportation credits for a load of milk originating within a Federal order marketing area compared to another load of milk that originates from a point just outside of that marketing area. At the time when the transportation credit provisions were adopted, there was not a better way of determining the Class I differential at an origination point outside of a marketing area because there was no single Class I pricing surface. Consequently, with 31 different orders, there were probably 31 different Class I differentials that would have applied in that unregulated county based on the location adjustments provided in the 31 different orders. Under the circumstances, it appeared to be most reasonable to use the Class I differential that would apply under the order receiving the milk.

With the national Class I price surface adopted in this final decision, there is a single Class I differential for every county in the 48 states. Consequently, § 1005.82(d)(3)(v) and § 1007.82(d)(3)(v) have been changed to use the Class I differential specified in § 1000.52 for purposes of determining the price to be used at the origination point of a load of milk shipped directly from producers' farms. This change will remove the large disparities that can now exist in computing transportation credits for similarly-located milk.

One final change has been made in paragraph (d)(3)(i) of §§ 1005.82 and 1007.82. At the present time, 2 methods are provided for determining the origination point for a load of supplemental milk directly from producers' farms. The origination point may be the city nearest to the farm of the last producer whose milk is on a tank truck. Alternatively, the hauler may stop at an independently-operated truck stop and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop.

The latter option has never been used to establish an origination point during the life of this provision, perhaps because it is not cost effective to stop and weigh a load of milk. For this reason, it should be removed from the order.

Pooling standards. Several comment letters from producers and producer organizations expressed support for the pooling

provisions recommended in the proposed rule for the proposed southeast orders. The comments emphasized the necessity to incorporate strict performance standards in these orders. Commentors argued that such standards would ensure that the markets are adequately supplied throughout the year in an orderly manner and prevent opportunistic pooling which, they contend, would lower the blend prices to producers serving these markets throughout the year, thereby decreasing production in these already-deficit markets and forcing handlers to pay higher prices to obtain supplementary milk.

The comments leading to the proposed rule and those submitted in response to it endorsed pooling standards at levels that are as strict or stricter than current regulations and emphasized that the southeastern milk marketing orders should provide pooling standards that reflect the deficit nature of these markets. These comments are embodied in the standards adopted for these orders.

The pool plant provisions adopted for the Appalachian, Florida, and Southeast orders closely follow the provisions now contained in the southeast orders. These provisions are appropriate for the needs of these seasonally-deficit markets.

Section 7(a) of each Federal milk order describes the pooling standards for a distributing plant. To qualify for pooling under each of the 3 orders, a distributing plant must have route disposition equal to at least 50 percent of the total fluid milk products physically received at the plant. In addition, at least 25 percent of the plant's receipts must be disposed of as route disposition in the marketing area. These standards will ensure that a distributing plant meeting them is closely associated with the fluid market and, therefore, should be part of the marketwide pool.

At the present time, the Carolina order has a 15 percent in-area route disposition standard, while the Southeast, Upper Florida, Tampa Bay, Southeastern Florida, and Louisville-Lexington-Evansville orders have a 10 percent standard. This level is raised to 25 percent under the merged orders. The reason for raising this standard to 25 percent is to better identify those plants which should be fully regulated under the larger, merged orders. With 11 large markets, instead of 31 smaller markets, the higher 25 percent standard, which is uniform for all 11 markets, will better maintain the regulatory status of plants throughout the country. It will leave unregulated, or partially regulated, those plants which have only a small amount of their sales within a Federal order marketing area.

Paragraph (b) of Section 7 will accommodate the pooling of plants that specialize in extended shelf-life fluid milk products (i.e., 60-90 days) requiring refrigeration. There are at least 3 such plants in the southeast markets: the Ryan Foods Company

plants in Jacksonville, Florida, and Murray, Kentucky, and the Dasi Products plant in Decatur, Alabama.

Unlike a typical distributing plant, a plant specializing in extended shelf-life products may have a more erratic processing schedule, reflecting the longer shelf life of the products packaged at the plant. Consequently, a plant's Class I utilization may vary considerably from month to month. In the past, such variability has resulted in shifting pool status for some of these plants from one order to another. In some months, the plant may have been partially regulated, even though all of the milk received at the plant was priced under the order. This type of regulatory instability is not conducive to orderly marketing. To provide greater regulatory stability for these plants, they should be fully regulated pool plants if they are located in the marketing area, have route disposition in the marketing area during the month, and process a majority of their milk receipts into fluid milk products. This provision will not guarantee that a plant qualifies as a fully-regulated pool plant every month; some months a plant may fail to process a “majority” of its milk receipts into fluid milk products. Nevertheless, the provision will guarantee that when a plant qualifies for pool plant status, it will be qualified under the same order all the time unless it fails to have any route disposition in the marketing area in which it is located.

One change in Section 7(a) and (b) of each order will help to stabilize the pool status of an extended shelf-life plant. At the present time in most orders, when packaged fluid milk products that are transferred from one plant to another plant are ultimately delivered from the 2nd plant to a retail or wholesale outlet, these sales are considered to be the route disposition of the 2nd plant. However, as adopted in this final decision, such transfers will be treated as route disposition from the 1st plant for the purpose of determining its pool status. Since some plants specializing in extended shelf-life products transfer such products between plants, this change will make it more likely that such plants will have route disposition in the marketing area.

Almost all of the dairy product manufacturing plants in the Southeast are “balancing plants” operated by cooperative associations. These "balancing plants" qualify for pooling based upon the performance of the cooperative association, not upon shipments from the plant alone.

A balancing plant may qualify for pool plant status based upon shipments directly from producers' farms as well as shipments from the plant. To qualify as a balancing plant, the plant must be located within the order's marketing area. This requirement ensures that milk pooled through the balancing plant is economically available to processors of fluid milk if needed.

However, in the case of the Appalachian order only, a balancing plant also may be located in the State of Virginia. This provision has been in the Carolina order and should be continued in the Appalachian order. The performance standards for a balancing plant require that 60 percent of a cooperative's producer receipts be delivered to pool distributing plants every month of the year. This provision is identical under the 3 southeast orders.

Each of the 3 orders also contains pooling standards for a supply plant. For the Appalachian and Southeast orders, a supply plant must ship at least 50 percent of the milk received during the month from dairy farmers and cooperative bulk tank handlers. The plant's receipts include milk that is diverted from the plant as well as milk physically received at the plant. In the case of the Florida order, the shipping percentage is slightly higher at 60 percent.

Unlike supply plant provisions in other orders, the supply plant provisions in the 3 southeast orders do not recognize shipments directly from producers' farms as qualifying shipments for a supply plant. At the present time, there are no plants qualifying as "pool supply plants" under any of the southeast orders.

Kraft Foods, Inc., submitted a comment in opposition to the supply plant provision proposed for the Southeast order, arguing that it should be permitted to pool its Bentonville, Arkansas, cheese plant based on milk diverted from this plant directly from producers' farms to pool distributing plants. Kraft argues that the proposed pool supply plant provision of Order 7 would require it to physically receive milk at its plant, reload it onto a truck, and ship it to pool distributing plants in order for the Bentonville plant to meet the supply plant shipping standards of Order 7.

Currently, there are no pool supply plants on the Southeast, Appalachian, or Florida orders. When supplemental milk is needed for these markets, most of the milk comes directly from producers' farms, some of which can fill an over-the-road tank truck several times a day. With farms of this size, there is obviously no need to aggregate the milk from several farms at a supply plant.

A primary mission of most cooperatives supplying the Southeast is to provide milk to handlers for fluid use and to dispose of milk when not needed for fluid use efficiently. The order provisions should accommodate and encourage efficient milk handling practices.

The cooperative balancing plant provision is intended to allow cooperatives to supply the fluid market in the most efficient manner possible and also to process milk efficiently when such milk is not needed for fluid use. In the Southeast

region, the dominant cooperative operates butter-powder plants in Kentucky and Louisiana and one cheese plant in Tennessee. Oftentimes during the year, these plants are completely idle when all available milk is needed for Class I and II use.

In the Southeast, where fluid handlers are subject to relatively high Class I prices, order provisions should aid them in procuring milk supplies by providing stringent pooling standards. This will help to ensure that the Class I prices applicable to these handlers will serve their purpose in generating uniform prices that will attract milk for fluid use. The supply plant provisions proposed by Kraft are neither needed nor supported by the vast majority of participants in these markets and therefore are not adopted.

It is not necessary to seasonally adjust the supply plant and balancing plant shipping requirements for the 3 southeast orders because the standards proposed are flexible enough to accommodate the disposal of surplus milk during the flush production season. In addition, each of the 3 orders contains a provision to allow the market administrator to increase or decrease shipping requirements and other pooling standards by up to 10 percentage points. This provision also is included in the producer milk section of all 3 orders with respect to the percentage of milk that may be diverted and in the number of days that a producer's milk must be received at a pool plant.

In addition to the provisions described above, each of the southeast orders contains a provision to allow unit pooling of distributing plants operated by the same handler. This provision has been in the Southeast order since 1995.

Some distributing plants may meet the pooling standards of more than one order. Consequently, it is necessary to specify the rules for determining where a plant will be regulated. Under the southeast orders, if a plant meets the pooling standards of the order and is located in the order's respective marketing area, the plant will be regulated under that order even if it has greater sales in some other order's marketing area. This provision has evolved as a result of several price alignment problems in the Southeast involving a plant located in one marketing area but regulated under another order. In every such case, a plant's supply of milk was put in jeopardy as a result of a lower blend price under the order in which it became regulated based on its sales. Notwithstanding the merging of several of the smaller markets in the Southeast, this provision should be retained for the southeast orders to preclude a repetition of this problem. There was widespread support in comment letters for retention of this provision.

In the case of a distributing plant that is not located within any order's marketing area, a different standard should

apply. Since, in this case, it cannot be presumed with certainty that a plant is most closely associated with the market in which it is located, its association with a market should be determined based upon where it has the most sales.

Producer-handler. The producer-handler provision for the 3 southeast orders is very similar to the current provisions. There were no comments received in opposition to this provision.

To qualify as a producer-handler, a dairy farmer would have to have route disposition in excess of 150,000 pounds per month; otherwise, the producer's plant would be exempt from regulation pursuant to a provision that has been uniformly adopted for all orders. In addition, a dairy farmer may receive no fluid milk products from sources other than his or her farm. Finally, the dairy farmer must provide proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are his/her own enterprise and are operated at his/her own risk.

At the present time, there are fewer than 5 producer-handlers operating in the southeast markets. The status of these handlers occasionally fluctuates between being fully regulated plants in some months and producer-handlers in other months. None of these operations would lose their status as producer-handlers under the provision adopted for the new southeast orders.

Producer/Producer milk. The producer and producer milk definitions adopted for the 3 southeast orders are nearly identical to the provisions now in the individual orders. These provisions define which dairy farmers are eligible to share in the proceeds of the marketwide pool.

A producer is defined as a dairy farmer whose milk is received at a pool plant, diverted to a nonpool plant, or received by a cooperative association acting as a bulk tank handler. It excludes a producer-handler, a dairy farmer whose milk is delivered to an exempt plant, or a dairy farmer whose milk is reported as diverted milk under the provisions of another Federal order.

The diversion limits that are specified in the producer milk section of the new orders are slightly different among the 3 southeast orders. To qualify for diversion to a nonpool plant, a minimum amount of a producer’s milk must be received at a pool plant during the month (i.e., this is called a “touch-base” requirement). Under the Appalachian order, 6 days’ production must be received at a pool plant during each of the months of July through December, and 2 days’ production must be received at a pool plant during each of the other months of the year. Under the Southeast order, 10 days’ production is required to be delivered to a pool plant during each of the months of July through December

to qualify a producer's milk for diversion to a nonpool plant. During the months of January through June, 4 days' production is be required to be delivered to a pool plant.

Under the proposed Florida order, which will have a higher Class I utilization and less need to divert milk, a producer is required to deliver at least 10 days' production to a pool plant during every month of the year in order to be eligible for diversion to a nonpool plant. These proposed standards are comparable to those required under the separate Florida orders.

The total quantity of milk which may be diverted by a pool plant operator or cooperative association during the month also varies by market as well as by month. Under the Appalachian order, a pool plant operator or cooperative association is permitted to divert 25 percent of its producer milk during the months of July through November, January and February. During the months of December and March through June, the total diversion limit increases to 40 percent of producer milk receipts. In the Southeast order, a total diversion limit of 33 percent is provided during the months of July through December, and 50 percent during the other months. The diversion limits under the Florida order are 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months.

The "touch base" requirements and gross diversion limits described above are adjustable by the market administrator to assure orderly marketing and/or efficient handling of milk in the marketing area. This procedure is described in §§ 1005.13(d)(7), 1006.13(d)(6), and 1007.13(d)(7).

Although a "dairy farmer for other markets" provision was requested for the new orders by some producer organizations, it was opposed by others. This provision is not included in the 3 southeast orders at this time. Such a provision could restrict the free movement of milk as needed among markets. The proposed diversion limits and touch-base requirements in the southeast orders should preclude the association of milk with these markets when such milk is not needed at pool plants.

Reports of receipts and utilization. To accommodate the payment schedule desired for the 3 southeast orders, the handler's report of receipts and utilization must be in the market administrator's office no later than the 7th day of the month. The producer payroll report will be required by the 20th day of the month. The information to be included in these proposed reports is essentially identical to the current order provisions.

Payments for milk. The southeast orders provide uniform payment schedules for payments to and from the producer-settlement fund. Payment to the producer-settlement fund must be made by the 12th day of the month and payment from the producer-settlement fund

must be made one day later.

In the case of payments to producers and cooperative associations, the merged Florida order will maintain the longstanding 3-payment schedule that has been part of the present Florida orders for many years. The partial payments to producers under the new Florida order must be made on the 20th day of the month for milk received during the first 15 days of the month and on the 5th day of the following month for milk received during the remainder of the month. The rate of payment will be at not less than 85 percent of the preceding month's uniform price, adjusted for plant location and for proper deductions authorized in writing by the producer. The final payment for milk received during the previous month must be made on or before the 15th day of the month.

The Appalachian and Southeast orders adopted here have identical payment schedules. The partial payment for milk received during the first 15 days of the month must be made on the 26th day of the month, and the rate of payment must be 90 percent of the preceding month's uniform price. The final payment must be received by the producer on or before the 14th day of the following month. The rate of final payment for all 3 orders is the preceding month's uniform price adjusted for butterfat, plant location, partial payments, marketing services, and proper deductions authorized in writing by the producer.
Each order will require payment to a cooperative association to be made one day earlier than the payment to an individual producer.

It should be noted that the payment dates described above may be delayed if the payment is due on a Saturday, Sunday, or national holiday. In such case, the payment will be due on the next day that the market administrator's office is open for business. This new rule is provided in § 1000.90.

6c. MIDWEST REGION

Upper Midwest Order
Pool Plant

The pool distributing and pool supply plant definitions of the consolidated Upper Midwest order should use the standard order language used in other orders, adapted to marketing conditions in the Upper Midwest.

The pool distributing plant definition specifies that for a plant to be a pool distributing plant, it must have 15 percent or more of its total receipts of fluid milk distributed as route disposition. This percentage is considerably lower than the percentage used in the Chicago Regional order, which varies from 30 percent to 45 percent depending on the month. However, the current Upper Midwest order uses a percentage based on the marketwide Class I percentage for the same month of the previous year. During "normal" months this percentage is approximately 15 percent. When some milk is held off the pool for economic reasons (primarily unusual price differences between classes), the percentage may vary considerably, ranging from the "normal" 15 percent to over 50 percent.

In addition to specifying the route disposition percentage at 15 percent, the percentage would be calculated on the basis of the total receipts of fluid milk products physically received at the distributing plant. Currently both the Chicago Regional and Upper Midwest orders include milk diverted from the distributing plant in the total bulk receipts used to compute the route disposition percentage. Use of a constant percentage at approximately the market Class I percentage, and removing diverted milk from a distributing plant's receipts in determining its regulatory status, will reduce the current opportunities available to distributing plants to become partially regulated by manipulating their reported receipts and diversions of milk. In addition, the language adopted should eliminate month-to-month uncertainty caused by basing handlers' regulatory status on the market's fluctuating utilization percentage.

The Identical Provisions Committee recommended that the in-area distribution criteria for pool distributing plants be 15 percent of total route disposition, and that percentage was included in the proposed rule. However, it was determined that a 25-percent standard for in-area sales would be appropriate for all markets to assure that handlers not already regulated would not become regulated solely because of order consolidation. The Committee explained that use of total route disposition rather than bulk receipts as the denominator would reduce opportunities for handlers to manipulate the manner in which they may report their operations to avoid regulation. Currently in the Chicago

Regional and Upper Midwest orders the in-area route disposition standard (10 percent in Chicago Regional and 15 percent in Upper Midwest) is computed using the same basis (bulk receipts, including diversions) as is used to determine whether a plant meets the definition of a pool distributing plant.

Provision is made for a single handler to form a unit of distributing plants and manufacturing plants, all of which must be located within the marketing area. The unit would have to meet the requirements for a pool distributing plant and at least one of the plants in the unit must meet the pool distributing plant requirements as a separate plant. Plants not meeting the pool distributing plant definition will be required to have disposition of packaged fluid milk products, packaged fluid cream products, or cottage cheese and other soft manufactured products of at least half of their receipts of Grade A bulk fluid milk products, including milk diverted by the plant operator.

Manufacturing plants traditionally have been included in units with distributing plants because the manufacturing plants produced products such as packaged fluid cream, sour cream, and cottage cheese that are marketed in conjunction with bottled fluid milk products. In addition, some of these plants produce a limited quantity of fluid milk products. Handlers have argued that the operator of a free-standing manufacturing plant that manufactures these complementary products should be able to pool its milk supply for both (or for several) plants as if all of the products were made in the bottling plant.

Both the Chicago Regional and Upper Midwest orders contain a provision for a distributing plant unit. Although the current Chicago Regional order does not specify the types of products that may be manufactured at plants in the unit, the Upper Midwest order does. It is reasonable to place restrictions on the types of products that are disposed of from the manufacturing plants in the unit, since these plants will receive the benefits reserved for pool distributing plants and shipments from supply plants to the plants in the unit will be considered in determining pool supply plant qualifications.

A pool supply plant operator should ship as qualifying shipments at least 10 percent of the plant’s receipts of milk from producers, including milk diverted by the handler, each month. As in the current Chicago Regional order, such shipments may be made to pool distributing plants, pool distributing plant units, plants of producer-handlers, partially regulated distributing plants, or distributing plants fully regulated by other Federal milk orders. The extent of shipments to partially regulated distributing plants to be used for qualification would be limited to the quantity classified as Class I. Qualifying shipments to distributing plants regulated by other Federal milk orders should be limited to

the quantity shipped to pool distributing plants, and may not be agreed-upon Class II, Class III or Class IV utilization. Shipments directly from farms to pool distributing plants and to plants contained in pool distributing plant units should be included as shipments that help to meet the percentage qualification standard.

The 10 percent shipping requirement adopted in this decision is approximately 5 percentage points less than the anticipated Class I percentage for the consolidated Upper Midwest order. The 10 percent shipping standard is greater than the current individual supply plant shipping standard and equal to the maximum shipping percentage required of pool units during the qualifying period in the current Chicago Regional order. The standard under the current Upper Midwest order, which uses the Class I use percentage of the same month in the previous year as the supply plant shipping percentage, would exceed the adopted percentage. Also under the current Upper Midwest order, a reserve supply plant must ship 10 percent of its receipts to pool distributing plants during January through June, and the marketwide Class I percentage for the same months of the preceding year for the months of July through December.

Several handlers, including a large cooperative association, a cheesemakers' organization, and a fluid milk handler, filed comments stating that the 10 percent shipping standard for supply plants is too high for this market with a Class I utilization percentage that rarely would exceed 20 percent.

The 10-percent shipping percentage is below the estimated Class I percentage for the consolidated Upper Midwest order and should be appropriate, even in view of the fact that many distributing plants have a supply of milk from their own producers. In September 1997, approximately 27 percent of the milk pooled or received at distributing plants in the Chicago Regional order was pooled as producer milk with the distributing plant operators as the handlers, rather than as producer milk pooled by cooperatives and other handlers. The milk pooled by distributing plant handlers accounted for approximately 12 percent of the total milk pooled in September 1997 (or approximately 5 percent of the total milk that would have been pooled if all of the milk eligible to be pooled in September 1997 had been pooled). Approximately 7 percent of the Class I producer milk, or approximately 2 percent of the total producer milk, pooled under the Upper Midwest order is pooled by distributing plant operators. The combination of the supply plant shipping percentage and the percentage of milk pooled directly by distributing plant handlers would appear sufficient to meet anticipated Class I needs in the consolidated Upper Midwest order. The 10 percent supply plant shipping percentage also should be appropriate to avoid

unnecessary and uneconomic shipments.

It should be remembered that the provisions adopted in this decision will allow the market administrator to increase or decrease the required shipping percentage on a marketwide or selected area basis if deemed necessary to assure an adequate supply of milk to pool distributing plants or to prevent uneconomic shipments of milk. If the shipping percentage is increased by the market administrator, shipments made for the purpose of meeting the increased percentage may be made only to pool distributing plants or plants contained in pool distributing plant units.

A comment filed by a cheesemakers' organization expressed concern about the potential competitive inequities of a provision enabling the market administrator to change the shipping percentage for a selected portion of the marketing area. This provision has existed in the current Upper Midwest order for some time without resulting in any controversy. The provision probably will be more useful with the considerable enlargement of the marketing area through consolidation. It may be more inequitable to require increased shipments from plants in, for instance, Grand Forks, North Dakota, to supply deficits in the Chicago area (700 miles distant) than it currently would be to require those plants to increase qualifying shipments so that distributing plants in the Twin Cities area (300 miles away) will be able to obtain needed supplies. It should be remembered that there are plentiful supplies of milk produced within 100-200 miles of any part of this marketing area. Certainly care will be taken to assure that handlers are not placed at significant competitive disadvantage.

Groups of two or more supply plants will be allowed to form systems of supply plants for the purpose of meeting the shipping requirements, by shipping the same percentage as that required for individual pool supply plants that are not part of such a system. These pool supply plant systems may consist of plants of the same handler or more than one handler, and may contain both proprietary and cooperative handlers. The only requirement affecting an individual plant within the unit is that the plant must be physically located within the marketing area. This restriction is necessary to prevent distant plants from receiving the benefits of participating in the marketwide pool without having an actual association with the market.

Several plants located outside the boundaries of the consolidated marketing area currently are included in supply plant units by a "grandfather clause" in the Upper Midwest order. The order will provide that these plants may continue to be included in a supply plant system if they so desire as long as they maintain continuous pool plant status.

Handlers may form supply plant systems by filing a written

request by July 15, listing the plants to be in the system. Such a system will remain in effect from August 1 through July 31 of the following year. These dates deviate from those provided for other orders because of the difference in seasonal production variations between this and other orders. The handler or handlers establishing the system may also delete a plant from the system or dissolve the system by submitting a written request to the market administrator. Any plant deleted from a system, or plants that were part of a system that was discontinued, may not be part of a system until the following August.

Provisions that allow handlers to add plants to a system under certain circumstances and to allow systems to reorganize in the event a plant changes ownership or in the event of a business failure by a handler are also incorporated in the order. A system failing to meet pooling standards will be allowed to drop plants from the system until the system does qualify. The handler responsible for assuring that the system qualifies must notify the market administrator of which plants are to be deleted from the system. If the handler does not notify the market administrator, the market administrator will exclude plants from the system beginning with the plant at the bottom of the list of plants submitted by the handler responsible for qualifying the system, and continuing up the list until the system qualifies.

The provisions for supply plant systems are very similar to the provisions currently contained in both the Chicago Regional and Upper Midwest orders. Unlike the Chicago Regional and the Upper Midwest orders, however, this order does not contain a specific shipping requirement for individual plants within a supply plant system. In the current Chicago Regional order, pool supply plant systems have twice the percentage shipping standard of individual supply plants, with individual plants within the systems required to ship 47,000 pounds or three percent of their producer receipts, whichever is less, in five of the six months of August through January. The current Upper Midwest order requires handlers with supply plants in a supply plant system to ship five percent of each handler’s Grade A receipts, including milk diverted by the handler to nonpool plants, during one of the months of August through December.

This decision does not provide for the category of supply plants referred to as reserve supply plants. Reserve supply plants ceased to be included in the Chicago Regional order in 1987, while the Upper Midwest continues to provide for them. With year-round shipping requirements, the unlimited ability of the market administrator to change shipping percentages both in level and in area, and the ability of supply plants to form systems, there is no compelling reason to have two categories of supply plants.

A provision to allow plants to remain qualified for up to two consecutive months due to unavoidable circumstances, such as a natural disaster, fire, breakdown of equipment, or work stoppage is included in this decision. The provision is contained in the Chicago Regional order and has worked quite well in giving handlers some administrative relief in the face of certain unavoidable circumstances.

Comments filed by a cooperative association and a fluid milk handler urged that the unit reporting, accounting and allocation provisions of the Chicago Regional order be retained in the consolidated order. This issue is considered and addressed in the Classification section of this decision.

Producer Milk

The definition of producer milk determines which milk will be eligible to participate in the Federal order pool. This decision provides that milk received at a pool plant directly from producers or from a cooperative association acting as a handler should be eligible to be producer milk. Milk for which the operator of a pool plant is the handler that is delivered directly from the farm to another pool plant should also be considered producer milk. Under certain circumstances, milk delivered to a nonpool plant may also be considered producer milk. Milk delivered directly from a farm to a nonpool plant may be considered producer milk if at least one day's production is received at a pool plant during the dairy farmer's first month as a producer.

In order to qualify as producer milk the milk pooled by a cooperative association acting as a handler described in § 1030.9(c), the cooperative must deliver at least 10 percent of the milk for which it is the handler pursuant to § 1030.9(c) to pool distributing plants, units of pool distributing plants, plants of producer-handlers, or partially regulated distributing plants. The shipments to partially regulated distributing plants are limited to the quantity classified as Class I. These are the same performance requirements that apply to supply plants, with the exception of the treatment of milk shipped direct from farms to distributing plants regulated under other orders. If such milk is allocated to Class I under the other order, it will become producer milk under that order. The same performance requirements that apply to supply plants apply to cooperative associations acting as handlers if the market administrator adjusts the shipping percentages.

No significant differences in the treatment of milk received at pool plants are provided under this decision than under the current Chicago Regional or Upper Midwest orders. There are, however, several differences relating to diverted milk. This decision allows the operator of a pool plant to divert, or ship

milk directly from the farm to another pool plant, the milk of producers for which it is the handler, and account for the milk as producer milk at the shipping plant. Allowing either a proprietary pool plant or a cooperative pool plant to divert milk to another pool plant is consistent with the Chicago Regional order. In the Upper Midwest order, milk that is received at a pool plant and for which a cooperative association is the handler is considered producer milk at the receiving plant. The Upper Midwest order specifies that a proprietary handler may divert milk to another pool plant and that such milk will be considered producer milk of the diverting proprietary handler. The language adopted under this decision leaves to the discretion of the cooperative association the option of diverting milk to another pool plant from its own pool plant or delivering the milk to the pool plant in its capacity as a handler of producer milk pursuant to § 1030.9(c).

The consolidated Upper Midwest order requires that a new producer or a producer who has broken association with the market have at least one day’s production received at a pool plant during the first month in which the producer's milk is reported as producer milk. Currently the Chicago Regional order requires a new producer on the market or a producer who has broken association with the market to have at least one day’s production received at the pool plant at which the milk is reported during the first month in which the producer's milk is considered to be producer milk eligible for diversion to a nonpool plant. In addition, at least one day’s production of a producer's milk must be received at a pool plant in each of the months of August through January to be eligible for diversion to a nonpool plant. The current Upper Midwest order requires that a new producer or a producer who has broken association with the market be received at a pool plant prior to the milk being diverted to a nonpool plant.

There is little or no justification for forcing producer milk to be received at a pool plant to maintain or prove association with the market. Supply plants and cooperatives will be required to ship a fixed percentage of their total milk supply, not just that portion received at their plants, to the fluid market. Since both cooperatives and proprietary handlers can move milk directly from the farm to the fluid market there is little reason to force milk into a pool plant solely for regulatory purposes. Certainly the extra cost to the handler of moving milk for regulatory purposes does not enhance economic efficiency or milk quality and in fact decreases economic efficiency and milk quality to the detriment of the entire market.

This decision provides that producer milk be priced in the month in which it is delivered to the plant of first receipt, although the proposed rule would have priced milk in the month in

which it is picked up at the farm. Some orders have allowed milk picked up on the last day of a month but delivered to a plant in the next month to be priced in the month in which it was picked up. A comment filed by Wisconsin Cheesemakers favored continuation of this regulatory treatment. For purposes of uniformity between the consolidated orders (which apply to many handlers, cooperative and proprietary, who operate in more than one order area) and clarity of plant accounting for milk received and used during each month all orders now will provide that producer milk is not received until it actually enters a plant.

Under the consolidated order, as in the proposed rule, producer milk will be priced at the location of the plant at which the milk is physically unloaded into processing facilities or a storage tank. In the current Chicago Regional order milk is priced where milk is pumped within the confines of a plant. The adopted order language will eliminate the pricing of milk where it is pumped from truck to truck and price the milk where it is eventually unloaded into processing facilities or a storage tank.

Location Adjustments and Transportation Credits

To help move milk to the fluid market a transportation credit and an assembly/procurement credit for Class I milk are contained in the Upper Midwest order. The transportation credit will be computed by multiplying the hundredweight of milk contained in transfers of bulk fluid milk from pool plants to pool distributing plants and used in Class I by the value obtained by multiplying .0028 times the number of miles between the transferor plant and transferee plants with an offset for a positive difference between the Class I prices at the transferee and transferor plants. The transportation credit should be paid to the receiving handler, as the milk will be pooled at the location from which it is shipped and the credit will, to some extent, duplicate the function of the location adjustment in helping to cover the cost of moving it from supply plants to fluid milk handlers.

The transportation credit is similar to the transportation credit currently contained in the Chicago Regional order. Both the transportation credit adopted in this decision and the current credit, which uses the same .0028 rate, are applied to Class I milk only. However, in the current Chicago Regional order the credit is based on 110 percent of the Class I milk received at the pool distributing plant. The proposed rule would have provided that the transportation credit be paid to the shipping handler on the basis of Class I milk transferred to fluid milk plants.

Several interested persons commented on the use of transportation credits and assembly credits in this consolidated order, with most favoring such provisions but disagreeing to some extent with their proposed application. There was disagreement between the comments on whether the credit should apply to the

shipping or the receiving handler and whether it should apply to all Class I milk, both direct-shipped and from plants, or just to milk transferred from plants and used in Class I. One commenter also stated that the proposed rate did not cover enough of the actual cost of moving milk.

In the case of milk received at a distributing plant from a supply plant operated by a cooperative association, the order provides that a distributing plant pay the supply plant from which it receives milk at not less than the price applicable at the distributing plant. The shipping plant must account to the marketwide pool at the price applicable at the shipping plant, where the milk was first received. Payment of the distributing plant's Class I price for milk in Class I uses will assure that cooperative associations are being paid the order minimum price for such milk. The distributing plant, then, is responsible for the cost of getting the milk from the supply plant location to its own, with some assistance from the transportation credit to the extent that the calculated cost exceeds the difference in the Class I prices between the shipping and receiving plants.

There must be some contribution from consumers to the cost of moving milk to deficit locations. However, incorporating the entire cost of hauling milk in the transportation credit could have the effect of encouraging handlers to procure milk from greater distances than necessary. If milk is moved from a higher-priced zone to a lower-priced zone (which may be necessary to obtain needed supplies of milk at outlying distributing plants), there will be no offset for differences in Class I prices between the shipping and receiving plants.

Unlike the transportation credit, which is based on mileage and paid only on transfers of bulk milk to pool distributing plants, the assembly/procurement credit is paid at the rate of 8 cents per hundredweight of Class I milk transferred or diverted by a pool plant to a pool distributing plant. An assembly/ procurement credit also will be applied to milk received from producers and from cooperative associations acting as handlers pursuant to § 1030.9(c) based on the pro rata share of producer milk delivered to a pool distributing plant and allocated to Class I.

A comment filed by a cooperative association stated that assembly credits should not apply to distributing plants' own milk supplies, but only to milk obtained from supply plants or cooperatives. If such a change were made, distributing plant operators who have arranged for their own milk supplies would have an 8-cent disadvantage in procuring milk in comparison with their competitors who obtain milk only from supply plants and cooperatives.

A transportation credit and procurement credit are

incorporated in the order to assist handlers in supplying the Class I market. These transportation and procurement credits, to be paid on Class I milk only in combination with the Class I price surface discussed elsewhere in this final decision, will help handlers move milk to the fluid market by distributing the cost of supplying the fluid market to all market participants who share in the marketwide pool. Handlers and producers who supply the Class I market on a regular basis should not be expected to bear the entire cost of supplying the Class I market while handlers and producers who meet only the minimum requirements derive the benefits of marketwide pooling. Incorporation of a transportation credit and procurement credit on Class I milk in the marketwide pool will assure that at least some of the cost of supplying the Class I market is shared among all market participants.

Reporting and Payment Dates

Comments filed by two handlers opposed changing the reporting dates for the consolidated order from the 10th to the 9th of the month following receipt and use of the milk. It should be apparent, especially to the cooperative association that filed this comment, that payment to producers cannot be determined until the marketwide pooling process is completed and minimum producer pay prices calculated. The earlier the pooling process can begin, the sooner producers can be paid. The reporting date of the 9th, adopted in this decision, is the latest date for filing handler reports in any of the consolidated orders. Two other orders specify the 9th, with one order requiring reporting on the 8th and the other seven orders specifying that handler reports be filed on or before the 7th of the following month. Because reporting should be somewhat more uniform among the Upper Midwest handlers after consolidation of the orders, their reporting burdens should be reduced accordingly. Further, technology certainly has improved the ability of all businesses to keep records and organize data for reporting purposes since the current reporting dates were established (over 35 years ago).

Wisconsin Cheesemakers' comment opposed reducing the time lag between when producers deliver milk to handlers and when they are paid for that milk. The current dates for paying producers for the milk delivered in the first half of each month (the 3rd and 4th of the following month) under these two orders are among the latest, if not the latest, in the entire Federal milk order system. The date adopted in this decision, the 26th of the same month, is the same as in three other consolidated orders, later than in five of the other orders, and earlier than in two of the orders (none of which is later than the last day of the month). The date specified for final payment to producers ranks similarly. Producers need to be paid for the milk they've delivered several weeks before on as timely a basis as possible. The adopted

provisions will accomplish that goal.

Central Order.

Many of the provisions of the consolidated Central order are explained in the "Identical Provisions" portion of this decision, and need not be addressed here. The provisions that deviate somewhat from those adopted for other order areas are the provisions dealing with standards for determining the pool status of producers and handlers. An effort is made to explain significant differences between the pooling provisions of the 9 individual orders included in this consolidation and those of the consolidated order.

Pool Plant

The Central pool distributing plant definition follows closely the provisions contained in most of the other consolidated orders. The provisions adopted would make no difference in the pool status of distributing plants currently pooled under the individual orders.

Specifically, the percentage of a handler's total route disposition distributed within the marketing area that will result in the handler being fully regulated under the Central order is the same 25-percent standard adopted for all of the other 10 orders. The minimum percentage of a pool distributing plant's actual physical receipts of fluid milk products that would have to be distributed on routes is 25. Currently most of the orders included in the consolidated Central order include milk diverted from the distributing plant in the total bulk receipts used to compute the route disposition percentages.

The consolidated Central order provides that a single handler be allowed to form a unit of distributing plants and Class II manufacturing plants, all of which must be located within the marketing area. The unit must meet the requirements for a pool distributing plant, and at least one of the plants in the unit is required to meet the pool distributing plant requirements as a separate plant. Plants in the unit that do not meet the pool distributing plant definition are required to have disposition of packaged fluid milk products, packaged fluid cream products, or cottage cheese and other Class II products of at least half of their receipts of Grade A bulk fluid milk products, including milk diverted by the plant operator.

Class II manufacturing plants are included in units with distributing plants because the manufacturing plants produce products such as packaged fluid cream, sour cream, and cottage cheese that are marketed in conjunction with bottled fluid milk products. In addition, some of these plants produce a limited quantity of fluid milk products. Handlers have argued that the operator of a free-standing manufacturing plant that manufactures

these complementary products should be able to pool its milk supply for both (or for several) plants as if all of the products were made in the bottling plant.

The pool supply plant definition of the consolidated Central order contains provisions that assure continued pool qualification for any handlers or milk currently associated with the markets included in the consolidated Central market. The Iowa order contains no limit on the amount of direct-shipped milk that can be used to qualify a supply plant, and several of the other orders allow such deliveries to make up a portion of qualifying shipments. The consolidated order allows direct-shipped milk to be counted as pool qualifying shipments without limit.

The Greater Kansas City, Nebraska-Western Iowa, Southern Illinois-Eastern Missouri, and Southwest Plains orders contain cooperative balancing plant provisions, allowing cooperative-operated plants to be pooled if the cooperative delivers a given percentage of the milk for which it is the handler to pool distributing plants. The consolidated Central order also contains such a provision, including in the pool plant definition a plant operated by a cooperative association that supplies at least 35 percent of the milk for which it is the handler to pool distributing plants, either during the current month or for the immediately preceding 12-month period. The deliveries to pool distributing plants may include deliveries directly from the farms of producers for whom the co-op is the handler, as well as transfers from the cooperative's plant.

Cooperative association "balancing plants" serve the market as the outlet of last resort. When surplus milk has no other place to go on weekends, holidays, or during months of surplus production, it moves to cooperative association "balancing plants" where it is manufactured into storable products. When production decreases, these plants operate at minimal capacity or may be shut down completely. Cooperative members assume the burden and cost of processing surplus milk through such plants.

Most of the Central orders allow a period during which supply plants do not have to meet shipping percentages if they have done so for the months during which milk production levels are low and demand for fluid milk is high. The Iowa order has reduced shipping standards for such months. The order provisions adopted with this decision include a period during which supply plants that have served the needs of the market when milk supplies are tight are not required to meet shipping standards, but it is reduced from the 5-7 month period existing in the current orders to a 3-month period from May through July.

The percentage of receipts as qualifying shipments to distributing plants currently ranges from 30 to 50 percent for these orders, with the Iowa percentage reduced to 20 for the

months of December through August. The adopted shipping standards for pool supply plants under the consolidated Central order are 35 percent for the months of September through November and January and 25 percent for all other months, with plants meeting the percentage standard for the months of August through April being allowed to retain their pool status for the immediately following months of May through July.

Groups of two or more supply plants are allowed to form systems of supply plants for the purpose of meeting the shipping requirements by shipping the same percentage as that required for individual pool supply plants that are not part of such a system. These pool supply plant systems may consist of plants of the same handler or more than one handler, and may contain both proprietary and cooperative handlers. The only requirement affecting each plant within the system is that the plant must be physically located within the marketing area. This restriction is necessary to prevent distant plants from receiving the benefits of participating in the marketwide pool without having an actual association with the market.

As in the other consolidated orders, the market administrator will have the authority to increase or reduce the required shipping percentage as marketing conditions change for the purpose of assuring that an adequate supply of milk will be available for fluid use, or to assure that the order does not require handlers to undertake uneconomic movements of milk to maintain the pool status of their plants.

In addition, as in the consolidated Upper Midwest order, the provisions adopted in this decision will allow the market administrator to increase or decrease the required shipping percentage on a selected area basis, as well as a marketwide basis, if deemed necessary to reflect needed milk movements within this geographically extensive marketing area. This provision has existed in the current Upper Midwest order for some time without resulting in any controversy, and is expected to be useful in view of the considerable enlargement of the marketing area through consolidation. Care in using the provision must be exercised to avoid placing handlers in areas in which shipping percentages are temporarily increased or decreased at a competitive disadvantage or advantage to handlers in areas that have not been so affected. However, it would be more inequitable to require increased shipments from plants in, for instance, Eastern Colorado, to ship milk to plants in eastern Illinois to supply deficits in that portion of the marketing area.

Producer Milk

The producer and producer milk provisions of the orders consolidated in the Central order are quite similar to each other and differ little from those to be incorporated in the other

consolidated orders. The principal difference between some of the individual orders and the consolidated order is the limit on the percentage of a handler's pooled producer milk that may be diverted to nonpool plants. The percentage of a handler's milk that may be diverted to nonpool plants varies under the individual orders from 20 percent of milk received at pool plants during some months under the Eastern Colorado order to 70 percent for some months under the Nebraska-Western Iowa and Iowa orders. Most of the orders require each producer's milk to be received at a pool plant at least once each month. The consolidated Central order requires that a new producer or a producer who has broken association with the market have at least one day's production physically received as producer milk at a pool plant before the producer's milk is eligible to be diverted to nonpool plants.

In order to assure that all of the milk that has been pooled under these orders continues to qualify for pooling, the diversion limit adopted for the Central order is 65 percent for the months of September through November and January, and 75 percent for the months of February through April and December. Allowable diversions for the months of May through July are unlimited. There is no requirement that each producer's milk be received at pool plants for a minimum number of days per month. At the same time, the market administrator is authorized to increase or reduce the diversion limit as needed to maintain orderly marketing and efficient handling of milk in the marketing area.

Multiple Component Pricing

The reporting and payment provisions of the consolidated Central order include those common to other orders with multiple component pricing. These markets have a significant amount of milk used in manufactured products, and component pricing will enable producers to be paid according to the valuable components of their milk.

Mideast Order

Many of the provisions of the order for the consolidated Mideast marketing area are explained in the "Identical Provisions" portion of this final decision, and need not be addressed here. The provisions that deviate somewhat from those provided for other order areas are the provisions dealing with standards for determining the pool status of producers and handlers. A significant change from the proposed rule is that the uniform multiple component pricing plan provided for the six other orders that use multiple component pricing is also incorporated into the Mideast order, in place of the proposed pricing plan that differed slightly from the one common to the other orders with multiple component pricing provisions. This change is discussed more fully later in this section of this decision.

For the most part, pooling provisions have less effect on the current Michigan Upper Peninsula market than on the 4 other markets included in this consolidated order because Michigan Upper Peninsula is the only remaining individual handler pool in the current Federal order system. Therefore, pooling provisions are discussed in relation to the 4 principal markets included in the consolidated Mideast order.

Pool Plant

The Mideast pool distributing plant definition, in which the in-area route disposition qualification was proposed to exceed that contained in most of the other proposed orders (30 percent instead of 15 percent) to make less likely the full Federal regulation of three State-regulated plants, will instead use the same 25-percent standard of in-area route dispositions of receipts that is being provided in all of the other orders.

Several comments opposed use of an in-area standard higher than 15 percent, arguing that the standard in the Mideast area should not be higher than in other areas, and that handlers outside the market should be held to the "current" 15-percent standard. The adoption of a uniform 25-percent standard of in-area sales as a percentage of total route dispositions for all orders is discussed in the section of this decision dealing with Provisions Common to all Orders.

As in the other consolidated orders, the total route disposition percentage will be calculated on the basis of the total receipts of fluid milk products physically received at the distributing plant. Currently all four of the larger orders to be included in the consolidated Mideast order include milk diverted from the distributing plant in the total receipts used to compute the total route disposition percentage.

One comment urged that a pass-through provision similar to that in the current New York-New Jersey order (Order 2) be incorporated in the consolidated order to deal with the in-area route dispositions of handlers who do not meet the order's pooling requirements. Continuation of such a provision in Order 2 was considered and rejected in this decision, in the regional discussion of the Northeast order. There would be no valid basis for adopting such a provision in the Mideast order when it has been found not appropriate for use in the Northeast.

To assure continued pool qualification for all of the handlers who currently are associated with the Mideast markets, the pool supply plant definition of the consolidated Mideast order provides for all of the types of supply plants that currently qualify for pooling under the 4 principal orders. The Eastern Ohio-Western Pennsylvania pool plant provision includes a plant operated by a cooperative if the cooperative association delivers to distributing plants at least 35 percent of the milk for which

it is the handler during the current month or over the preceding 12 months. The Southern Michigan order (Order 40) includes as pool supply plants: (a) a plant that has been a pool plant for 12 consecutive months and has a marketing agreement with a cooperative association, and (b) a system of supply plants operated by one or more handlers. Order 40 also includes some shipments to other Federal order plants and partially regulated distributing plants, in addition to pool distributing plants, as qualifying shipments by supply plants.

The percentage of receipts as qualifying shipments to distributing plants currently ranges from 30 to 40 percent for these orders, with direct deliveries from farms rather than plant transfers limited to half of the required deliveries under three of the orders. All four of the orders require performance of pooling standards by supply plants for the months of September through February, followed by a "free ride" period during which shipping percentages need not be met by supply plants that met the shipping standards during the required period. The Indiana order contains a provision allowing the continued pooling of a plant that fails to meet pooling standards because of circumstances beyond the handler's control.

The shipping standards adopted under this decision for pool supply plants are 30 percent for all months, with plants meeting the standard for the months of September through February being allowed to retain their pool status for the immediately following months of March through August. For the purpose of making the 30 percent level of shipping standard less burdensome, up to 90 percent of required shipments are allowed to be made directly from farms to distributing plants. The cooperative association plant defined as a pool plant in the Eastern Ohio-Western Pennsylvania order is retained, as are the supply plant provisions peculiar to the Southern Michigan order. These provisions reflect marketing conditions specific to these current areas, and will assure that plants currently qualified for pooling will retain such status.

Producer Milk

The producer and producer milk provisions of the orders consolidated in the Mideast order are quite similar to and differ little from those incorporated in the other consolidated orders. The principal difference between some of the individual orders and the consolidated order would be the limit on the percentage of a handler's pooled producer milk that may be diverted to nonpool plants. The Ohio Valley, Indiana and Eastern Ohio-Western Pennsylvania orders all contain 50 percent diversion limits for the months of September through November, January and February and a 60 percent limit for the month of December, with no diversion limit for the months of March through August. The Southern Michigan order contains a 60-percent diversion limit for the

months of September through February, with no limit for the months of March through August. In order to assure that all of the milk that has been pooled under these orders continues to qualify for pooling, the diversion limit adopted for the Mideast order is 60 percent for the months of September through February, with no limit for the March through August period. At the same time, the market administrator is authorized to increase or reduce the diversion limit as needed to maintain orderly marketing and efficient handling of milk in the marketing area.

Multiple Component Pricing

In a change from the proposed rule, the reporting and payment provisions of the consolidated Mideast order adopted in this decision now conform to those of the other consolidated orders that provide for multiple component pricing (MCP). The proposed rule would have incorporated a pricing plan similar to the current Southern Michigan MCP plan in the consolidated order instead of the MCP plan proposed for the other consolidated orders. The Southern Michigan MCP plan differs from that included in the other current MCP orders only by pricing "fluid carrier" instead of "other solids."

The Farm Bill authorizes adoption of a "uniform" multiple component pricing plan. As a result, the component pricing plan has been modified to be the same as the plan contained in other MCP orders. The differences between the adopted MCP plan and that originally proposed for the consolidated Mideast order are not significant. The same prices would be used to compute component values, the same protein and butterfat prices would be used, and the proposed "fluid carrier" price was derived directly from the "other solids" price. The Mideast order language is changed accordingly, and will result in very little difference in total payments, either by handlers or to producers whose milk is pooled under the differing provisions.

Somatic Cell Adjustment.

Michigan Milk Producers Association (MMPA), a large cooperative association in Michigan, opposed changing the present Southern Michigan (Order 40) somatic cell count (SCC) adjustment schedule to the adjustment schedule proposed uniformly for all of the MCP orders with SCC adjustments. Changing the current Michigan SCC adjustment schedule to the uniform schedule included in the proposed rule would have the effect of reducing (from the current Order 40 level) the positive value adjustments on milk containing less than 200,000 SCCs and reducing the negative value adjustments on milk containing more than 700,000 SCCs. Incorporating the proposed adjustment in all of the consolidated orders that have somatic cell adjustments will make for a more uniform system of pricing and may better reflect measurable differences in value.

Reporting and Payment Dates.

MMPA proposed that handler reports be submitted one day earlier (on the 6th instead of the 7th day after the end of each month) so that producers can be paid a day earlier. The cooperative also advocated that producers be paid with two partial payments instead of one (on the 21st day of the month for the first 15 days' production and the 6th of the next month for the second half of the month's production instead of one partial payment on the 26th day of the month for the first 15 days' production, as proposed). Final payment for each month's milk would then be made no later than the 16th of the following month, instead of the 17th. The cooperative stated that reducing the time lag between delivering milk and being paid for it would better accommodate the cash flow requirements of modern larger dairy farms.

The Southern Michigan order currently requires that handler reports be filed no later than the 5th of the next month, and that nonmember producers be paid on the 15th. These dates are very early compared to most other Federal orders. Two of the orders included in the consolidated Mideast order currently have a reporting date of the 8th and payment dates of the 18th.

The dates included in the proposed rule and adopted in this decision represent an effort to find a middle ground between significant differences in the orders to be consolidated. The desire to accelerate payment to producers, both by increasing the number of partial payments and advancing the final payment date, is understandable. However, other interested parties in the consolidated area had no opportunity to indicate agreement with or opposition to such changes. These proposals would more properly be addressed in a formal rulemaking proceeding after this proceeding is completed.

6d. WESTERN REGION

This final decision adopts four Federal milk orders (i.e., Southwest, Arizona-Las Vegas, Western, and Pacific Northwest orders) for the western region. A number of comments were received in response to the proposed rule. These comments are addressed below under the applicable order discussion.

A number of changes have been made to the consolidated orders since the proposed rule. The significant changes that have been made to all or most of the consolidated orders are explained at the end of this regional discussion, whereas, those modifications that are unique to an individual order are discussed under the applicable order.

Southwest Order

The consolidated Southwest marketing area is comprised principally of the current Texas and New Mexico-West Texas marketing areas. With regard to milk production and population (consumption), these areas are both in the process of change, but in different ways. Texas has one of the fastest-growing populations in the U.S., and until recently has been able to maintain milk production on a per capita basis. After a significant increase in milk production during the 1988-1994 period, Texas milk production has been declining somewhat, accompanied by the exit of approximately 29 percent of the State's Grade A dairy farmers. If the current trend continues, the Texas market could come to resemble more closely those of the Southeast portion of the U.S., relying significantly on more distant milk supplies to meet the market's Class I and II needs. This situation currently exists for the southern parts of Texas.

The State of New Mexico has experienced relatively slow population growth, but dramatic increases in milk production -- from 1.099 billion pounds in 1988 to an estimated 4.020 billion pounds in 1997. With the declining production in Texas, the New Mexico milk-shed will be drawn upon more often to supply Class I and II needs in the Texas demand centers, 500-600 miles distant. Procurement costs would be expected to increase dramatically. In light of these circumstances, provisions in the Southwest order must provide flexibility to cooperatives and handlers supplying the market to prevent inefficient movements of milk and unnecessary costs of operation incurred for the purpose of participating in the market-wide pool.

Prior to enactment of the 1996 Farm Bill, cooperatives operating in the southwestern markets had determined that the two milk orders in the region were being operated as one and should be merged. Much discussion took place, and proposed order provisions were developed by the principal cooperatives involved. These comments, with numerous others, were considered in the development

of this final decision for the Southwest marketing area.

Pooling standards.

Most of the pooling standards in the Texas and New Mexico-West Texas orders have been suspended for some time. The rapid expansion of milk production in the region during the late 1980's created a situation in which cooperatives and handlers operating in the region could not meet the provisions of the orders while pooling all of their milk supplies. For this reason, the pooling standards for the Southwest order have been relaxed.

As adopted in this final decision, the pooling standards for a distributing plant require the plant to have route disposition equal to at least 25 percent of its fluid milk receipts at the plant during the month. In addition, at least 25 percent of the plant's route disposition must be in the marketing area.

One partially regulated plant located in the Texas marketing area will become fully regulated under this provision. The plant has been partially regulated under the Texas order and, periodically, fully regulated under the Chicago Regional order. The lowering from 50 percent to 25 percent of total route disposition for a pool distributing plant by the Southwest order will cause this plant to become fully regulated under the Southwest order and, thereby, alleviate the disorderly conditions caused by its shifts in regulation. There should be no change in the plant's costs, since their supply of milk comes from Southwest pool sources.

The pool plant provisions of the Southwest order have been revised in this final decision. The modification provides for the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products. A detailed explanation of the changes is located at the end of the western regional discussion.

There are no pool supply plants regulated under the present Texas and New Mexico-West Texas orders. Nevertheless, as recommended in the proposed rule and adopted in this final decision, provision is made for such an operation under the Southwest order. As proposed, to qualify as a pool plant, a supply plant must ship 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c) to pool distributing plants. The supply plant provisions have been modified in this final decision to include milk that is diverted to other plants as well as milk physically received at the plant to allow for more efficient movement of milk to distributing plants when needed.

A provision for the pooling of cooperative association balancing plants is also included in the consolidated order. A plant located within the marketing area that is operated by a cooperative association would qualify as a pool plant if pool plant status is requested for such plant by the cooperative

association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. The requirement that the plant be located in the marketing area ensures that milk pooled through the balancing plant is economically available to processors of fluid milk if needed.

One comment was received regarding the proposed pooling standards for supply plants. Kraft Foods, Inc. (Kraft), stated that the Southwest order should adopt all the options and pooling efficiencies contained in Section 7 of the proposed Central marketing order. Kraft asserts that the two markets have virtually identical populations (21 million) and Class I utilization (48 percent - 49 percent). In addition, the handler contends that the pool supply plant provisions of the Southwest order provide intra-market inequity among handlers in the Southwest market. Kraft indicated that a proprietary supply plant could qualify for pooling only by transferring 50 percent of milk physically received at the plant and noted that no farm to plant shipments are permitted to count towards qualifying. However, the handler stated, a plant in the marketing area operated by a cooperative association may make qualifying shipments directly from farms. The performance level, Kraft indicates, is 30 percent of all milk pooled by the cooperative.

A primary mission of most cooperatives supplying the Southwest market is to provide milk to handlers for fluid use and to dispose of milk efficiently when not needed for fluid use. The order provisions should accommodate and encourage efficient milk handling practices. The cooperative balancing plant provision is intended to allow cooperatives to supply the fluid market in the most efficient manner possible and also to process milk efficiently when such milk is not needed for fluid use. Almost all of the dairy product manufacturing plants in the current Texas and New Mexico-West Texas marketing orders are operated by cooperatives.

As stated in the proposed rule, the pooling provisions for the Southwest order are similar to the provisions in the present Texas and New Mexico-West Texas orders. The pool supply plant standards are consistent with and reflect the current marketing conditions of the consolidated Southwest order. The standards should ensure that milk of producers servicing the Class I needs of the market will be pooled. The provisions for a supply plant in this final decision does not recognize shipments directly from producers’ farms as qualifying shipments for a supply plant. However, there currently are no supply plants regulated under the Texas or New Mexico-West Texas orders. Accordingly, the

provisions should not place proprietary handlers at a competitive disadvantage and are appropriate to meet the needs of the market.

It is not necessary to seasonally adjust the supply plant and balancing plant shipping requirements for the Southwest order because the standards proposed are flexible enough to accommodate the disposal of surplus milk during the flush production season. Also, this order, like the other new consolidated orders, contains a provision to allow the market administrator to increase or decrease these shipping requirements.

In addition to the provisions described above, the Southwest order contains a provision to allow unit pooling of distributing plants operated by the same handler.

Producer-handler.

The producer-handler provisions that were proposed have been revised in this final decision to be very similar to the provisions in the current Texas and New Mexico-West Texas orders. The revisions should assure that the status of current producer-handlers will be unchanged.

Producer milk.

The current Texas and New Mexico-West Texas orders have provisions that require a producer's milk to be received at a pool plant, or touch base, before milk of the producer is eligible to be diverted. The proposed rule indicated that milk produced by producers located in the marketing area should be eligible for pooling without a particular percentage or number of days' production being required to be received at a pool plant. For producers located outside the marketing area the touch base provision of the proposed rule required that at least 15 percent of the production of producers be delivered to pool plants during the month in order to be eligible for pooling. Based on comments and a review of the different touch base requirements for producers both in and out of the area, the provision in the final decision has been changed. The provision in the final decision will allow diversion of producer milk of a new producer, provided there is a delivery of at least 40,000 pounds or one day's milk production, which ever is less, to a pool plant during the month (rather than before diversions are allowed). This dual "touch base" standard has been developed to accommodate a market that is characterized by substantial differences in size among dairy farmers. The requirement that one day's production be delivered to a pool plant, is appropriate for many producers but is unreasonable for those who produce as much as seven tanker loads a day.

The current Texas order allows an amount equal to one-third of the milk delivered to pool plants to be diverted (this provision is currently suspended), while the (currently suspended) New Mexico-West Texas provision allows 50 percent of a handler's

total milk supply to be diverted. In addition, the current Texas order provisions base allowable diversions on deliveries to individual pool plants, greatly exacerbating the time and effort required to keep track of milk movements. In the proposed rule the provision set the limit on diversions of producer milk on the basis of at least 50 percent of the milk pooled by a handler being received at pool plants for the handler's entire milk supply to be pooled. The diversion limit in this final decision is continued at 50 percent of a handler's total milk supply. The total performance standard will allow handlers to meet diversion limits more easily with more efficient movements of milk. In addition, the increased percentage of allowable diversions will assure that all of the producers whose milk would qualify for pooling under either of the two orders being consolidated will continue to meet pooling qualifications. A provision to allow the market administrator to make adjustments is included in the producer milk section of the order with respect to the percentage of milk that may be diverted.

Multiple component pricing.

The reporting and payment provisions of the consolidated Southwest order in the final decision include those common to other orders with multiple component pricing. The multiple component pricing plan does include a somatic cell adjustment for milk used in Classes II, III, and IV. The current Texas and New Mexico-West Texas orders do not provide multiple component pricing. However, the proposed provisions that were developed by the cooperatives involved in discussions to merge the current orders did include a multiple component pricing plan. As stated above, those comments were considered in the development of this final decision.

A comment was received from Leprino Foods Company (Leprino) regarding the inclusion of multiple component pricing in the consolidated Southwest order. Leprino strongly supports multiple component pricing for both handlers and producers and states that it has a direct interest in the consolidated Southwest order. Thus, there is support on both the producer, as represented by cooperative associations, and handler side of the Southwest dairy industry.

Transportation credits for surplus milk.

The Texas order currently has a market-wide service payment provision that gives credits for hauling surplus milk located in certain zones in Texas to nonpool plants outside the State for use in manufactured products. The provision has not been included in the consolidated Southwest order language because of declining production and increasing balancing plant capacity in the affected areas of Texas.

Payment provision.

The Texas order is one of only a few marketing orders that requires handlers to remit the full classified value during the month to the Market Administrator. In turn, the Market Administrator acts as a clearing house and forwards these proceeds on to the respective organizations. Interested persons have expressed an interest in retaining these provisions, not only for the proposed Southwest order, but for all other orders.

The current Texas payment provision was found necessary because of problems encountered in assuring timely payments by pooled handlers. The provision has been in the Texas order since 1979, and the earlier payment problems have been remedied. Such a provision involves a rather large degree of regulatory intervention between milk processors and their suppliers that should be shown to be necessary to correct existing problems. There is no indication that such problems currently exist, or would exist in the absence of the provision. Nearly all of the milk that will be pooled under the consolidated Southwest order is produced by cooperative members and pooled by the cooperatives. These large, business-oriented organizations should be able to assure that they receive full payment for their members' milk in a timely manner. In addition, there are provisions in the General provisions (Part 1000) that provide for enforcement of late or under-payment charges at one percent per month of the amount due.

Arizona-Las Vegas Order

Many of the provisions of the consolidated Arizona-Las Vegas order are explained in the "Identical Provisions" portion of this final decision and need not be addressed here. Those provisions that deviate to some extent from the "Identical Provisions" are addressed in this discussion.

Pool plant.

The pool distributing plant definition is similar to that contained in most of the other consolidated orders. The minimum percentage of a pool distributing plant's physical receipts of bulk fluid milk products that are disposed of as route disposition is 25 percent. The percentage of a handler's total route disposition into the marketing area that would result in a distributing plant becoming fully regulated under the Arizona-Las Vegas order is also 25 percent. While this definition differs slightly from the current order language, it provides uniformity with other consolidated orders and should result in no additional distributing plants being pooled under the Arizona-Las Vegas order or any change in the pool status of distributing plants currently pooled.

The pool plant provisions of the Arizona-Las Vegas order have been revised in this final decision. The modification provides for the pooling of plants that specialize in ultra-pasteurized or

aseptically-processed fluid milk products. A detailed explanation of the changes is located at the end of the western regional discussion.

The proposed pool supply plant definition would have required a supply plant to ship at least 50 percent of its physical receipts of milk from dairy farmers to pool distributing plants during the month in order to be a pool supply plant. In the proposed rule it was indicated that this definition would provide for easy, effective order administration and would result in no additional handlers being regulated under the order. The supply plant definition has been modified in this final decision to include milk that is diverted from the plant as well as milk physically received at the plant. There are currently no pool supply plants in the proposed marketing area.

The current Central Arizona order permits a manufacturing plant located in the marketing area that is operated by a cooperative association to be a pool plant, provided that the cooperative ships at least 50 percent of its member milk to pool plants of other handlers during the current month or the previous 12-month period ending with the current month. This percentage requirement is currently suspended. The proposed order suggested reducing this percentage to 35 percent and authorizing the market administrator to increase or reduce the percentage in response to market conditions. The 35 percent and the authorization to make adjustments in the level is contained in this final decision. The reduced performance standard should enable the continued pooling of producer milk that currently is pooled without resulting in uneconomic handling or disorderly marketing. The Arizona-Las Vegas order provides that a single handler be allowed to form a unit of distributing plants and Class II manufacturing plants provided each plant is located within the marketing area. The unit in total would be required to meet the requirements for a pool distributing plant and at least one of the plants in the unit would be required to meet the pool distributing plant definition individually. This provision would provide uniformity with other federal orders and would not change the status of any plants currently pooled. Class II manufacturing plants are included for unit pooling with distributing plants operated by the same handler because such plants produce products that are marketed in conjunction with fluid milk products.

A provision permitting the market administrator to adjust the percentages specified in the pool plant definition will provide the flexibility to respond in a timely manner to changing marketing conditions without the need for a formal hearing process.

Producer-handler.

The producer-handler provisions that were proposed have been

revised in this final decision to be very similar to the provisions in the current Arizona order. The revisions should assure that the status of current producers-handlers will be unchanged.

Producer.

The consolidated order contains a dairy farmer for other markets definition. A producer could not be pooled under the Arizona-Las Vegas order unless all of the milk from the same farm was pooled under this or some other federal order or unless such non-pooled milk went to a plant with only Class III or Class IV utilization. This differs slightly from the current definition in the Central Arizona order. Such a provision is needed in the consolidated order to prevent dairy farms whose milk is regularly used for fluid disposition in other markets from pooling the surplus portion of their production under the Arizona-Las Vegas order.

Producer milk.

The percentage of a handler's pooled milk that may be diverted to nonpool plants is 50 percent in any month. The proposed rule recommended a diversion limit of 20 percent in any month. Currently, diversions under the Central Arizona order are limited to eight days' production of a producer during four months of the year, with unlimited diversions the remainder of the year. The recommended 20 percent diversion limit was suggested because it was thought that this would have resulted in the amount of milk eligible for diversion being approximately equivalent to eight days' production and would have been easier to administer than the current order provisions. In addition, the proposed rule stated that the 20 percent limit year round would have assured that pooled milk will have a close association with the market's fluid processing plants.

Security Milk Producers Association (SMPA) expressed concern regarding the recommended 20 percent limit on the volume of a handler's pooled milk that may be diverted during any month. SMPA states that diversion requirements set at anything less than 50 percent would be financially detrimental to its producers. The cooperative requests that a limit be implemented that will not detract from the orderly flow of milk.

Based on the comments received by SMPA and an reevaluation of the marketing conditions in the consolidated Arizona-Las Vegas order, and noting that eight days production is about 40 percent, this final decision adopts for the Arizona-Las Vegas order a diversion limit of 50 percent for each month of the year. The 50 percent diversion limit year round is more flexible than the current order and the 20 percent limit recommended in the proposed rule and it would be easy to administer. In addition, the 50 percent diversion limit is consistent with the diversion limit

included in the Southwest order, which is adjacent to the Arizona-Las Vegas Order. Thus, the 50 percent diversion limit each month should allow the Class I needs of the market to be met while ensuring the orderly disposition of milk. In addition, the market administrator will have the authority to adjust the diversion percentage.

Multiple component pricing.

The Arizona-Las Vegas order does not provide for multiple component pricing (MCP). There are six plants that are expected to be regulated under the consolidated order: five proprietary distributing plants, and one manufacturing plant operated by a cooperative association. The Class I utilization for the order is expected to be less than 50 percent, a level that would, in some other orders, be an indication that component pricing would be appropriate. However, the Class I utilization at the five distributing plants is more than 80 percent. With the exception of the one cooperative balancing plant, the handlers to be regulated constitute predominantly a Class I market.

Prior to the issuance of the proposed rule, there were no comments received in support of MCP for the Arizona-Las Vegas order. However, Schreiber Foods, Inc. (Schreiber), Leprino, and SMPA have indicated support for MCP in the consolidated order. Schreiber agrees with National Milk Producers Federation that MCP is important in some but not all orders, and the rule to adopt such a plan and quality adjustments to minimum prices should be based on the dairy industry's preference in each area. The handler asserts that its Class III utilization of over 50 percent of the milk from the Arizona-Las Vegas market is a strong indication for the need of MCP in the order.

Leprino indicates that less than half of the milk in the proposed Arizona-Las Vegas order is used for Class I purposes. The handler argues that competitive inequities due to differences between fat-skim and MCP across manufacturers operating in different orders will become more significant as the manufacturing sector grows. It claims that the lack of MCP in the order will stimulate some disorderly marketing conditions as low component milk from New Mexico seeks higher revenue that will be available through the fat-skim pricing to the west. Additionally, SMPA strongly suggests that a system that prices the butterfat and protein components be incorporated in the order because it is in the best interest of producers.

This final decision does not adopt MCP for the consolidated Arizona-Las Vegas order. The current Central Arizona order does not contain a multiple component pricing plan. The handlers proposed to be regulated under the consolidated order are currently all, with one exception, regulated under the current Central Arizona order. The manufacturing of milk in the

consolidated order is anticipated to be done primarily by Schreiber, at a non-pool plant. Schreiber is almost totally supplied by United Dairymen of Arizona (UDA). Due to these marketing situations (i.e., one buyer and one seller), the implementation of MCP in the consolidated Arizona-Las Vegas order would only benefit some of the producers of the order. All of the producers in the marketing area would not share equitably. As stated in the proposed rule and explained above, the fluid nature of much of the market and the current marketing situations do not warrant MCP at this time.

Payment obligation of a partially regulated distributing plant.

SMPA recommended a proposal designed to equalize Class I costs between California distributing plants and handlers fully regulated under the proposed Arizona-Las Vegas order. SMPA explained that the proposal is essentially a modification of the "Wichita Option," which represents a reasonable method for computing a partially regulated distributing plant's obligation to the producer-settlement fund.

The "Wichita Option" compares the amounts paid to producers for milk received by a nonpool distributing plant with the full class-use value of milk that would have applied if the plant were fully regulated under the order. To equalize the competitive positions of both fully regulated plants and those plants not regulated under an order, any amount by which the class-use value exceeds the value paid to producers is due to the producer-settlement fund or can be paid to the producers who supplied the handler. However, this option does not function appropriately to handle milk from plants regulated under a State order that provides for market-wide pooling. Thus, the modified "Wichita Option" includes payment provisions for any plant regulated under such a State-operated program.

The current Great Basin order provides payment provisions for any handler operating a State-regulated distributing plant having route disposition in the Great Basin order. This provision has been incorporated in Section 76 of the General provisions in this final decision and is applicable to all orders.

Western Order

Many of the provisions of the consolidated Western order are explained in the "Identical Provisions" portion of this final decision and need not be addressed here. Those provisions that differ from those explained in the "Identical Provisions," or those currently contained in the orders to be consolidated, are discussed below.

Pool plant.

The pool distributing plant definition is similar to that contained in most of the other orders. The minimum percentage of

a pool distributing plant's physical receipts of bulk fluid milk products that are disposed of as route disposition is 25 percent. The percentage of a handler's total route disposition distributed into the marketing area that would result in a distributing plant becoming fully regulated under the Western order is also 25 percent. While this definition differs slightly from the current language of the orders included in this consolidated Western order, it provides uniformity with other consolidated orders and should result in no additional distributing plants being pooled under the order or any change in the pool status of distributing plants currently pooled.

The pool plant provisions of the Western order have been revised in this final decision. The modification to the pool plant definition provides for the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products. A detailed explanation of the changes is located at the end of the western regional discussion.

The proposed pool supply plant definition would have required a supply plant operator to ship at least 35 percent of the milk pooled at the supply plant, either by transfer or diversion, to pool distributing plants during the month in order to qualify for pooling. The 35 percent level is included in the final decision. The percentage is slightly higher than that contained in the current Southwest Idaho-Eastern Oregon order and slightly lower than that contained in the current Great Basin order. This change should result in no milk that is currently associated with either of the two orders losing such association.

The pool supply plant definition in the final decision includes provision for a March through August period during which a supply plant that has met the order's shipping percentages for the preceding months of September through February to be able to continue to be a pool plant without meeting the shipping standards. As with other consolidated orders, the market administrator will have the authority to increase or decrease the order's supply plant pooling standards as marketing conditions change.

The Western order final decision contains a provision that would permit a manufacturing plant operated by a cooperative association and located in the marketing area to be a pool plant if 35 percent of the milk for which the cooperative is the handler is received at pool distributing plants during the month or during the immediately preceding 12-month period. This provision is similar to one currently contained in the Great Basin order and in some of the other consolidated orders.

Although the two current orders that have been consolidated do not contain such a provision, the Western order would provide that a single handler be allowed to form a unit of distributing

plants and Class II manufacturing plants provided each plant is located within the marketing area, as suggested by the Identical Provisions committee. The unit in total would be required to meet the requirements for a pool distributing plant and at least one of the plants in the unit would be required to meet the pool distributing plant definition individually. This provision would provide uniformity with other federal orders and would not change the status of any plants currently pooled. Class II manufacturing plants are proposed to be included for unit pooling with distributing plants operated by the same handler because such plants produce products that are marketed in conjunction with fluid milk products.

Proprietary bulk tank handler.

The consolidated Western order final decision retains the bulk tank handler provision that is currently in the Southwestern Idaho-Eastern Oregon order, permitting a handler other than a cooperative association to divert milk to nonpool plants for the handler's account based on shipments of milk to pool plants of other handlers.

Producer-handler.

The producer-handler provisions that were proposed have been revised in this final decision to be very similar to the provisions in the current Great Basin and Southwestern Idaho-Eastern Oregon orders. The revisions should assure that the status of current producers-handlers will be unchanged.

Producer.

The Western order contains a dairy farmer for other markets definition. A producer would not qualify for pooling under the Western order unless all of the milk from the same farm was pooled under this or some other federal order or unless such non-pooled milk went to a plant with only Class III or Class IV utilization. This differs slightly from the current definition in the Great Basin order. Such a provision is contained in the Western order to prevent dairy farmers whose milk is regularly used for fluid disposition in other markets from pooling the surplus portion of their production on the consolidated order. Security Milk Producers Association supports this provision and states that it is needed to prevent the pooling of surplus milk from farms whose milk is regularly associated with other markets.

Producer milk.

The percentage of a handler's pooled milk for the Western order final decision that may be diverted to non-pool plants is 90 percent in any month. The proposed rule recommended a limit of 80 percent, which is identical to the percentage currently included in the Southwestern Idaho-Eastern Oregon order and is only slightly higher than that for the present Great Basin order (i.e., 75 percent for cooperatives and 70 percent for proprietary

handlers).

Avonmore West Inc. (Avonmore), a handler in the Southwestern Idaho-Eastern Oregon order in Twin Falls, Idaho, favors the more liberal qualification rules proposed for the Western Order whereby only one day's production of producer milk has to be received at a pool plant. However, the handler opposed the 80 percent standard of a handler's pooled milk that may be diverted to non-pool plants as recommended in the proposed rule. Avonmore indicated that the 80 percent diversion limitation is identical to the one currently in the Southwestern Idaho-Eastern Oregon Federal order and stated that this standard was suspended indefinitely in December 1989. The handler contends that the argument that the 80 percent diversion limitation caused uneconomic movements of milk is still valid today.

In 1997, Avonmore notes, an average of 217 million pounds of producer milk was diverted to nonpool plants each month. Accordingly, Avonmore argues that the reintroduction of the 80 percent diversion limitation would allow only 80 million pounds of producer milk to be diverted to nonpool plants. The handler contends this would preclude many dairy producers in Idaho from having their milk associated with the Western order, which could cause significant price disparities between producers and create disorderly marketing conditions that Federal orders are intended to prevent.

Utah Farm Bureau Federation filed a comment regarding the consolidation of the Great Basin and Southwestern Idaho-Eastern Oregon orders into the Western order. In their comments the federation states that the pooling provisions of the current Great Basin order must be maintained to prohibit opportunistic entry of outside milk into the Utah Class I pool.

As adopted in this final decision, the 90 percent diversion limitation is the same as that adopted in the consolidated Upper Midwest order. The 90 percent limitation on movements of pooled milk to nonpool plants should permit all milk associated with the market that is not needed at pool plants during the month to be pooled and priced under the order. The 90 percent standard provides handlers more flexibility to efficiently move milk. Although unlimited diversions are not incorporated in the consolidated order, the 90 percent standard should not preclude most producers associated with the current individual orders from having their milk pooled under the consolidated Western order. The 90 percent standard is an appropriate level for the consolidated order given the provisions contained in the current individual orders and should not create any disorderly marketing conditions. The recommended standard also should ensure that additional amounts of unneeded milk would not be pooled. In addition, as contained in other consolidated orders the market

administrator will have the authority to adjust the diversion percentage.

The order language allowing two or more cooperative associations to jointly met the diversion limits was inadvertently excluded from the proposed rule. Order language to allow this to occur has been included in this final decision.

Darigold Farms opposes the touch-base requirement that was recommended in the proposed rule. The cooperative contends that the exclusion of this provision may present an opportunity to obtain unified support for a provision that would prevent or reduce opportunistic pooling.

The current Southwestern Idaho-Eastern Oregon and Great Basin orders contain such a touch-base provision. The provision ensure that a producer whose milk is pooled on the order is indeed servicing the Class I needs of the market. Accordingly, the touch-base provision recommended in the proposed rule is adopted in this final decision. The provision provides that during the month at least one day's milk production of a dairy farmer new to the order must be physically received at a pool plant so that milk of such producer is eligible for diversion.

Reports of receipts and utilization and payroll reports.

The Western order requires pool handlers to file a "report of receipts and utilization" on or before the seventh day after the end of the month. This is identical to the current reporting date in the Great Basin order but two days earlier than the same provision in the Southwestern Idaho-Eastern Oregon order. Almost all handlers currently file reports by FAX or some other form of electronic data transfer, which eliminates delays due to mail handling. A seven-day reporting period should allow adequate time for handlers to prepare reports and will allow the computation and release of producer price information to occur on or before the 12th day after the end of the month.

The date on which the report of payments to producers is due to the market administrator under the Western order is on or before the 21st day after the end of the month. This is the same date as that under the Great Basin order, but one day earlier than under the Southwestern Idaho-Eastern Oregon order. The earlier reporting date and announcement of producer prices should assure that an earlier payroll reporting date would not be burdensome.

Multiple component pricing.

Both the Great Basin order and the Southwestern Idaho-Eastern Oregon order currently have multiple component pricing based on protein without a somatic cell adjustment. The multiple component pricing provisions of the consolidated Western order should be the same as those for other proposed orders that provide for multiple component pricing based on protein but without a somatic cell

adjustment. The Western order has a significant amount of milk used in manufactured products, especially cheese, and component pricing will enable producers to be paid according to the value of the components of their milk. However, the somatic cell adjustment included in some of the consolidated orders for which component pricing is proposed is not warranted by marketing conditions under the Western order, and such an adjustment is not included in the final decision.

Avonmore expressed support for the use of multiple component pricing in the Western Order and strongly recommended the inclusion of a somatic cell count price adjuster. Avonmore states the SCC adjuster is necessary because the manufacture of cheese is the predominant use of milk in the Western Order. Avonmore notes that it has been documented that elevated levels of SCC impact cheese yield. In addition, the handler contends that dairy products (i.e., cheese, NFDM, butter, whey products) exported to the European Union must be made with milk containing less than 400,000 SCC.

Darigold Farms, a cooperative that will have milk on the order has expressed the opinion that an adjustment for somatic cells is a quality issue that may be better dealt with between the buyer and seller. In addition, the nearby Pacific Northwest order will not have a somatic cell adjustment. The somatic cell count of milk produced in the western U.S. is at an average level of 250,000. This level is significantly lower than the 350,000 level, which provides no adjustment in the consolidated orders that adjust for somatic cell count. For the reasons stated above and due to the high quality of milk produced in the consolidated Western marketing area, a quality adjustment is unnecessary and need not be included in the order.

Payments to and from the producer settlement fund.

Payments to the producer settlement fund under the consolidated order are due on or before the 14th day after the end of the month. This is two days after the announcement of uniform producer prices, which is an identical time period to that which exists in the two current orders that are being consolidated.

Payments from the producer settlement fund under the consolidated order would be due on or before the 15th day after the end of the month. This is the same date as under the current Great Basin order and three days earlier than under the Southwestern Idaho-Eastern Oregon order. This payment date should be practicable, given the use of current banking and transmission techniques.

Payments to producers and cooperative associations.

Under the Western order, partial payments would be due from handlers to producers who are not members of cooperative associations on or before the 25th day of the month in an amount

not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producers during the first 15 days of the month. Final payments would be due on or before the 17th day after the end of the month.

Partial payments to cooperative associations would be due on or before the 24th day of the month at the same rate as above, with final payments due on or before the 16th day after the end of the month. These final payment dates represent very little or no change from the orders' present payment dates. The partial payment dates are earlier than those required under the current orders, but are very close to those suggested by the Identical Provisions committee, and compliance should present no hardship to handlers who would already have had the use of the producers' milk for 9 to 23 days.

Pacific Northwest Order

Many of the provisions of the Pacific Northwest order are explained in the "Identical Provisions" portion of this final decision, and need not be addressed here. The provisions that deviate somewhat from those incorporated in other order areas are the provisions dealing with standards for determining the pool status of producers and handlers, the definition of producer-handlers, the factors upon which payments to producers are calculated, and reporting and payment dates. Because this order is not proposed to be consolidated with any other orders, there is little reason for changing the substance of many of the provisions that are not included in the General Provisions.

Pool distributing plant.

The pool distributing plant provisions of the proposed Pacific Northwest Order are changed from the current definition to one that more closely resembles the definition suggested in the identical provisions report. Rather than basing the identification of a pool distributing plant on only 10 percent of the plant's receipts as in-area route dispositions, the order should specify that such a plant have at least 25 percent of its physical receipts distributed as route disposition, and at least 25 percent of its route disposition distributed within the marketing area.

It is expected that the modified pooling standard will not affect the pool status of any plant that currently does or does not meet the pooling standard of the Pacific Northwest order. In addition, it would remedy a provision that could result in fully regulating a plant that has minimal association with the marketing area.

The pool plant provisions of the Pacific Northwest order have been revised in this final decision. One modification provides for the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products. A detailed explanation of the changes is located at the end of the western regional

discussion.

Pool supply plant.

For the most part, the current pool supply plant definition of the Pacific Northwest order and the performance standard of shipping 20 percent of the milk is appropriate to the marketing conditions in the area. However, the provision that currently requires a handler to include producer milk moved directly to pool distributing plants in the shipments on which pool plant performance is calculated is changed to allow the handler to include such movements if the handler wants to qualify its plant for pooling. A plant operator who receives milk at a plant only for manufacturing use also will be able to supply producer milk directly to distributing plants without a requirement that the manufacturing plant be a supply plant.

In the Pacific Northwest order the current March through August period during which supply plants do not have to ship the minimum percentage to distributing plants if they have done so during the previous September through February period is included in the pool supply plant definition.

As in the other consolidated orders, the market administrator will have the authority to increase or decrease the order's pooling provisions as marketing conditions change for the purpose of assuring that an adequate supply of milk will be available for fluid use, or to assure that the order does not require handlers to undertake uneconomic movements of milk to maintain: (1) the pool status of their plants, or (2) the pooling of producers who have historically been associated with the market and who help serve Class I needs.

Nonpool plant.

The current definition and exemption for milk produced and processed by state institutions, as contained in the present order's producer-handler definition, is expanded and moved to be included in the "Nonpool plant" definition contained in the General Provisions. Such entities, along with colleges and universities and charitable organizations, will not be subject to the orders' pricing and pooling provisions as long as they have no sales in commercial channels.

The present Pacific Northwest order provisions allow a state institution to avoid any regulation on the portion of its milk that is used only within the institution, and apply some pricing regulation to that portion that is distributed in commercial channels. In some respects, this arrangement is similar to the situation of partially regulated distributing plants. However, partially regulated distributing plant operators, to avoid obligations under Federal orders, must show that they pay the dairy farmers who ship milk to them at a rate at least commensurate with that paid to producers whose milk is pooled under the order. In any case, they must procure a milk supply in the competitive market. State institutions may have any number of cost advantages over regulated handlers in the

production and processing of milk, such as not having to pay a minimum wage and not having to pay property taxes. It would be unjust to allow such institutions to compete with fully regulated handlers in regular commercial channels as if the playing field were level. Therefore, state and other institutions that compete with regulated handlers in regular commercial channels, such as bids for school milk programs, would be regulated on those sales.

Producer-handler.

The current Pacific Northwest producer-handler provisions remain essentially untouched. Some of the "Identical Provisions" features of the producer-handler definition, such as the 150,000-pound thresholds for route dispositions, own farm production, and receipts from pool plants are adopted in this final decision. The rest of the current producer-handler provisions remain in effect for administrative purposes.

Producer-handlers represent a much larger portion of the Class I dispositions in the Pacific Northwest marketing area than in most other Federal order areas. In many marketing areas, producer-handlers supply one percent or less of the Class I sales. In the Pacific Northwest area, however, they furnish almost 10 percent of the market's Class I dispositions. The larger average size of the dairy farms in the western United States makes more likely the existence of a producer-handler that is a significant factor in the market.

The current order's producer-handler provisions are based on the history of producer-handler operations in the marketing area, reflecting difficulties encountered in order administration, attempts to circumvent order provisions, and court challenges.

In addition to the current order provisions, the producer-handler definition contains language clarifying that milk received by the producer-handler at a location other than the producer-handler's processing plant for distribution on routes will be included as a receipt from another handler.

Reserve supply unit.

The Pacific Northwest order will continue to provide for a cooperative reserve supply unit. The existing provision has many similarities to a reserve supply plant, which is not provided in this order but which is included in several of the consolidated orders.

Under the terms of the present provision, the cooperative members of the reserve supply unit must be located near a pool distributing plant, as a reserve supply plant must be located in the marketing area. Both the reserve supply unit and the reserve supply plant provisions require that the plant or unit operator request prior approval of the market administrator to initiate and cancel their status, both require long-term association with the market, and both provide substantial penalties for failing to meet all required conditions. Although

the cooperative unit does not have monthly qualification requirements, it is subject to a call by the market administrator after the market administrator's investigation of the need for supplemental supplies of milk. Because of the current existence of this provision, based on the need shown at a public hearing, and its similarities to a pooling mechanism suggested for other orders, provision for the cooperative reserve supply unit will continue to be included in the Pacific Northwest order.

The order language regarding the exemption from diversion limits for a cooperative reserve supply unit was inadvertently excluded from the proposed rule. The order language for this exemption has been included in this final decision.

The order language allowing two or more cooperative associations to jointly met the diversion limits was also inadvertently excluded from the proposed rule. Order language to allow this to occur has been included in this final decision.

Producer and producer milk.

The consolidated Pacific Northwest order would contain a "dairy farmer for other markets" provision for each month of the year. The large volume of milk production in California and California's quota system give dairy farmers an incentive to pool production in a volume equal to their quota pounds on the California order, and then attempt to share in the Pacific Northwest Class I market with their over-quota production, for which returns under the California order are much less. At the same time, none of the California Class I returns would be shared with Pacific Northwest producers. Similarly, producers subject to other state programs should not be allowed to pool the reserve supplies from the State-regulated markets and share in returns from the Pacific Northwest pool while enjoying the benefits of the State orders' Class I returns.

The current provisions of the Pacific Northwest order do not require that a producer's milk be received at pool plants for the producer's first pooled delivery on the market or for any specified period. If a handler meets its overall performance requirements for supplying milk to the market, it should make no difference which individual producer's milk is actually delivered to pool plants as long as the milk of each producer participating in the pool is Grade A and available to the market if and when needed. It is expensive, inefficient, and unnecessary to move milk from areas close to nonpool manufacturing plants to bottling plants in the city markets when that milk is not needed for bottling. For the above reasons and furthermore because there are often great distances and mountainous terrain between plants and farms in the more sparsely populated West, no "touch base" requirements should be included. As stated previously, Darigold Farms supports the exclusion of "touch base" requirements. The cooperative states that the exclusion may present an opportunity to obtain unified

support for a provision that would prevent or reduce opportunistic pooling.

This order and other western orders have allowed producers to pool milk on more than one order during the same month. Because of the locations of a number of dairy farmers, their milk may be used by pool plants regulated under more than one order in a single month. These producers also represent a reserve supply for more than one market. Large, multi-market handlers should be given the flexibility to market and transport their milk to fulfill the needs of their customers in the most efficient way possible.

The small changes in the final decision from the current pooling provisions of the Pacific Northwest order result in very little change in the order's diversion limits. The limit of 80 percent of the handler's supply of producer milk remains unchanged, with the months during which the percentage is effective changed from September through April to September through February. These months will correspond to the months during which supply plants must ship 20 percent of their receipts to pool distributing plants.

In the current order there is no limit on diversions during May through August. In this final decision there will be a limit of 99 percent on diversions of producer milk for the months of March through August. The current delivery standards have not been overly restrictive nor associated unneeded supplies with the market and should be allowed to continue basically unchanged. However, the change from without limit to a percentage amount will allow the market administrator, as provided for in other orders the authority to adjust the percentage of milk that may be diverted.

Payments to producers and cooperative associations.

Although the current Pacific Northwest order contains a multiple component pricing plan very like that proposed to be standard for the consolidated orders, it does not now and would not under this reform process contain a somatic cell adjustment provision. The level of somatic cells in the western U.S. is generally lower than in the east, with an overall average of approximately 250,000 instead of 350,000. This lower somatic cell count would seem to reduce the need for such a provision. Historically, the principal argument for a somatic cell adjuster has been the negative effect of somatic cells on the cheese yields. Although cheese manufacturing in the Northwest is increasing, most cheese manufacturing is done by cooperative associations who have expressed the opinion that an adjustment for somatic cells is a quality issue best dealt with internally. The somatic cell adjustments in the consolidated orders of the final decision are not incorporated in the Pacific Northwest order.

Announcement of producer prices.

The dates on which handler reports, market administrator's

announcement of producer prices, and payment to producers would remain unchanged from those of the current order.

General comment related to orders.

Darigold Farms suggests that the new orders provide some performance requirements attached to each individual market, but recommends that a producer, once qualified, should be locked into the pool for a minimum of four months. This recommendation has not been incorporated in the final decision for any of the western orders. The provisions adopted in each order should ensure that the Class I needs of the markets are met.

Major changes to orders from the proposed rule.

The pool plant provisions of the orders in the western region have been revised. Paragraph (b) of Section 7 will accommodate the pooling of plants that specialize in ultra-pasteurized or aseptically-processed fluid milk products (i.e., fluid milk products with a shelf life of at least 60-90 days without refrigeration.) At the present time, there are no plants processing this type of product in the Southwest, Arizona-Las Vegas, or Pacific Northwest marketing areas. However, there is one plant in the Western order market area.

Unlike a typical distributing plant, a plant specializing in extended shelf-life products may have a more erratic processing schedule, reflecting the longer shelf life of the products packaged at the plant. Consequently, a plant's Class I utilization may vary considerably from month to month. In certain areas of the country, such variability has resulted in shifting pool status for this type of plant from one order to another. Such regulatory instability is not conducive to orderly marketing. To provide greater regulatory stability for these plants, they should be fully regulated pool plants if they are located in the marketing area and process at least 25 percent of their fluid milk product receipts during the month into ultra-pasteurized or aseptically-processed fluid milk products. This provision will not guarantee that a plant qualifies as a fully-regulated pool plant every month; some months a plant may fail to process 25 percent of its milk receipts into ultra-pasteurized or aseptically-processed fluid milk products. Nevertheless, the provision will guarantee that if a plant meets the 25 percent standard described above, it will be qualified under the same order all the time.