

FEDERAL REGISTER



VOLUME 27

NUMBER 18

Washington, Friday, January 26, 1962

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Parts 1001, 1002, 1004, 1014, 1006, 1016, 1003, 1007, 1010, 1015]

[Docket Nos. AO-14-A 31, AO-71-A 41, AO-160-A 23, AO-302-A 5, AO-203-A 13, AO-312-A 2, AO-293-A 4, AO-204-A 13, AO-276-A 3, AO-305-A 5]

MILK IN THE GREATER BOSTON, MASS.; NEW YORK-NEW JERSEY; PHILADELPHIA, PA.; SOUTHEASTERN NEW ENGLAND; SPRINGFIELD, MASS.; UPPER CHESAPEAKE BAY; WASHINGTON, D.C.; WORCESTER, MASS.; WILMINGTON, DEL., AND CONNECTICUT MARKETING AREAS

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [(7 CFR Part 900) (7 CFR Chapter X note)] notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the respective tentative marketing agreements and orders regulating the handling of milk in the Greater Boston, New York-New Jersey, Philadelphia, Southeastern New England, Springfield, Upper Chesapeake Bay, Washington, D.C., Worcester, Wilmington, and Connecticut marketing areas. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than close of business the 20th day after publication of this decision in the **FEDERAL REGISTER**. The exceptions should be filed in six copies.

Preliminary statement. The hearing, on the record of which the proposed

amendments, as hereinafter set forth, to the said tentative marketing agreements and to the orders were formulated, was conducted at New York City during the periods June 19-30 and July 10-August 2, 1961, pursuant to notice thereof issued June 2, 1961 (26 F.R. 5075).

The hearing, which lasted 28 days and consisted of over 5200 pages of testimony accompanied by 110 exhibits, was concerned primarily with the problem of establishing appropriate prices for reserve milk in the ten Federally-regulated fluid milk markets in the Northeastern section of the United States. From this general problem three central issues arose.

The first issue related to the propriety of the existing relationship between reserve milk prices in the Northeastern Federally-regulated markets and prices paid dairy farmers for milk of manufacturing grade at Midwestern plants. This was the dominant issue at the hearing, with a variety of price formula proposals presented for establishing appropriate price relationships.

The several proposals offered, and the testimony presented in support thereof, ranged from suggestions to lower the Class III milk price under Order No. 2¹ for the New York-New Jersey market, including the reinstatement of the butter-cheese differential at four cents per pound of butterfat during all months of the year, and to reduce Class II milk prices in the five New England Federal order markets, to proposed increases in the prices of such respective classes and in the comparable classes of the other Northeastern markets up to at least the level of the prices paid dairy farmers for manufacturing grade milk in the Midwest as reflected by the "Minnesota-Wisconsin Manufacturing Grade Milk-Price Series" (compiled by the Agricultural Estimates Division, U.S.D.A.). The focal point of the controversy involved in this issue was a proposal to use such Minnesota-Wisconsin price series as the basis for Class III milk prices under Order No. 2.

It was the general position of Midwestern representatives of processors,

¹ Formerly Order No. 27.

cooperatives and others, including representatives of the States of Minnesota and Wisconsin, testifying at the hearing, that prices resulting from the present Class III price formula in Order No. 2 are too low in relation to prices paid farmers for manufacturing grade milk at Minnesota and Wisconsin plants, producing competitive disadvantage to Midwestern processors in the sale of the "hard" products of milk, such as butter, nonfat dry milk and cheddar cheese, in Eastern seaboard markets.

Such representatives contended further that the profitability to New York-New Jersey market processors of manufacturing products in Class III milk tends to depress the manufactured products market generally by adding to the national surplus, to the detriment of all farmers producing for this market. An appeal was made that the Federal Government should revise price levels in the Northeastern markets, particularly in the New York-New Jersey market, to insure a pricing policy for milk over and above fluid requirements more consistent with the price aims of the national dairy price support program and to provide equitable pricing to Midwestern dairy farmers.

Although not adhering to any specific price formula to attain these ends, Midwestern representatives proposed rather that the Northeastern markets' minimum prices for surplus milk "be fixed at the highest level that a handler with reasonably efficient operations could afford to pay for such milk, who processes said milk into so-called hard products, so that such handler would not have a competitive advantage in the marketing of such hard products in the domestic market." They recommended, in this connection, careful consideration of the Minnesota-Wisconsin pay price series to obtain the desired result.

Three of the four major producer cooperative groups in the New York-New Jersey market and representatives of handlers of milk in that market strongly opposed the use of such series for pricing Class III milk in the New York-New Jersey market. In support of their general position they testified that the series is based on dairy farmer pay prices in an area approximately 1,000 miles from the New York-New Jersey milkshed

where the seasonality of production, ratio of supply to demand, and other competitive factors differ substantially from conditions in the New York-New Jersey milkshed. They seriously questioned the use of a price series which, at the time of the hearing, had not yet been established statistically and under which no experience had been gained to test its effects on price levels under Order No. 2. They maintained that the pricing of over \$200 million worth of surplus milk per year in Northeastern markets, where a one-cent change in the price can amount to \$60,000 per month in milk value, is too important a matter for reliance upon an untested price series.

The second issue involved the relative levels of reserve milk (manufacturing class) prices in the ten Northeastern fluid milk markets, particularly in respect of problems of competition among processors in the sale of such products as cream, ice cream, ice cream mix, and condensed skim milk in these markets and adjacent areas. Although there were differences in the methods proposed for bringing about price alignment, all witnesses except one, who testified in regard to this issue, supported close alignment of the manufacturing class prices in the ten orders.

There also was testimony by several New York-New Jersey market handler representatives to the effect that extreme emergency conditions existed in the New York-New Jersey milkshed while the hearing was in progress and that immediate action should be taken to suspend the seasonal factors in the Class III formula of Order No. 2 for the fall months of 1961. A representative of several New England producer cooperative associations testified that the seasonal factors in the Class II price formula of the respective New England orders should be suspended, if necessary, to a level which would provide uniformity of surplus prices on a month-to-month basis as between New England and the New York-New Jersey markets during the remainder of 1961. The suspension proposals on which this testimony was offered were denied by determination issued August 11, 1961, and no further findings are necessary on this matter.

The third main issue was concerned with the proposition that at certain times more milk will be produced than handlers operating under the classified pricing system will be willing to accept at the specified minimum class prices in an order. Certain cooperative associations in the New York-New Jersey market, supporting this view, submitted a proposed plan to handle such "excess surplus" milk through a cooperative marketing agency and to price this milk under the orders on the basis of the return for the products of the milk as disposed of under the Federal dairy products price support program, less the expenses of handling and processing. The plan developed considerable opposition from New York-New Jersey handlers and New England-based cooperatives.

More briefly described, the material issues on the record of the hearing relate to:

(1) The establishment of pricing provisions for Class III milk under the New York-New Jersey order and for Class II milk under, respectively, the Greater Boston, Massachusetts; Philadelphia, Pennsylvania; Southeastern New England; Springfield, Massachusetts; Upper Chesapeake Bay; Washington, D.C.; Worcester, Massachusetts; Wilmington, Delaware, and Connecticut orders which are appropriately related: (a) to the value of milk in the Midwest for manufacturing uses and (b) to each other (discussed below as Issues Nos. 1 and 2); This involves consideration of the type and kind of formula or formulas to be used under the respective orders, including the continued applicability of the butter-cheese adjustment presently contained in the New York-New Jersey order;

(2) Provision for the separate and flexible pricing of "excess" surplus milk marketed by or for the account of an incorporated cooperative marketing agency under the Federal government's price support program for dairy products (discussed below as Issue No. 3).

The hearing was called following the submission of amendment proposals applicable to the ten orders by the principal cooperative associations of producers in the several New England, the New York-New Jersey, and the Philadelphia and Wilmington markets, and by certain cooperatives operating in the states of Wisconsin and Minnesota. Certain handlers individually, and the principal handler associations, in the New York-New Jersey market and certain processors of milk produced in Wisconsin and Kansas also submitted amendment proposals affecting one or more of the subject orders.

The proposals submitted, and the testimony presented by proponents and others in support thereof, were directed to the following types of pricing formulas for the respective reserve classes of milk under such orders:

(1) A formula (of the general type in current use in the New York-New Jersey market) based on central market prices for Grade A (92-score) butter at New York City and nonfat dry milk at Chicago area manufacturing plants or at New York City, minus an allowance for handling, including several variations as follows:

(a) Provision for a "basic" manufacturing price formula containing separate fat and skim values [(92-Score butter, New York City +2 cents \times 3.5-29 cents) + (average price of spray process nonfat dry milk at Chicago area plants -6 cents \times 7.8)]. Seasonal adjustments to the class price would be made whenever the percentage of total producer receipts allocated to Class I exceed a specified amount.

(b) Revision of the relative production weights given to roller and spray process nonfat dry milk and an increase in the yield factor for nonfat dry milk.

(c) Elimination of seasonal adjustments in the pricing of reserve milk.

(d) Use of the average price of spray process nonfat dry milk minus one cent, with preference to prices reported in "The Producers Price-Current".

(e) Adoption of offsetting plus and minus seasonal differentials in the Class III price formula.

(f) Addition of one cent to the monthly average price of Grade A butter at New York.

(g) The following proposals relating to the differential pricing of milk for butter and cheese within the reserve class (at present only the New York-New Jersey order results in such differential pricing) were offered:

(i) Establish a differential of four cents per pound of butterfat to be applicable in all months, except August through November if a seasonal adjustment, as explained in (a) above, is added to the class price during those months.

(ii) Make the differential applicable during the months of August through November, when the percentage of Class III milk during the month exceeds 35 percent of total receipts.

(iii) Provide a differential of three cents per pound of butterfat during the months of July through February and four cents during the months of March through June.

(iv) Provide in the New York-New Jersey order only, a differential of four cents per pound of butterfat in all months of the year.

(2) The "Minnesota-Wisconsin Manufacturing Grade Milk-Price Series".

(3) The "U.S. Average Manufacturing Grade Milk-Price Series".

(4) A "reverse" supply-demand adjustment factor for the Philadelphia and Wilmington Class II price formulas to operate as follows: Increase or decrease the surplus class price as the proportion of the receipts allocated to such class increases, or decreases, respectively, from the necessary quantity of reserve milk over the immediately preceding 12 months (proponent suggested a like adjustment for the New York-New Jersey order also), with a maximum price deviation of plus or minus 25 cents per hundredweight from the New York-New Jersey Class III price.

(5) A revised method, made with reference to the Philadelphia and Wilmington orders only, of computing the average price of cream at Philadelphia as used in such orders, and addition of a "sub-Class II" price during the spring months for milk in certain products.

Much of the testimony adduced at the hearing centered around the question of the type of formula most appropriate for fixing the minimum level of price for Class III milk in the New York-New Jersey market. Because of the dominant position of the New York-New Jersey market in the controversies involved, major emphasis is given first to the establishment of an appropriate formula for determination of the Class III milk price in Order No. 2 (Issue No. 1). A discussion of testimony relating to the need for appropriate alignment of prices among all ten Northeastern markets is set forth below under the heading Issue No. 2.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence pre-

sented at the hearing and the record thereof.

ISSUE No. 1

Testimony of proponents of the product price minus handling allowance type of formula. At the present time minimum prices to producers for Class III milk in the New York-New Jersey Federal milk order are based upon the market prices of butter and nonfat dry milk. Basically, the price each month is determined by first adding two cents to the monthly average price of U.S. Grade A (92-Score) butter in New York City. This value is then multiplied by 1.22 to determine the value of one pound of butterfat, which is then multiplied by 3.5 to arrive at the value of butterfat in 3.5 percent milk. To this value is added the product of multiplying the weighted average price of nonfat dry milk made by the roller (weighted 70) and spray (weighted 30) process, f.o.b. manufacturing plants in the Chicago area, by 7.8. From this total is deducted a "make (processing) allowance" of 80 cents. A seasonal adjustment is then added.

The above computation, except for an additional 3 cents added to the average butter price when Class III utilization is relatively low during August through February, is the formula used each month to determine the monthly price of Class III milk in Order No. 2. During December through July, however, butterfat in milk used in the manufacture of butter and certain types of cheese is priced at certain specified differentials below such Class III price.

New York-New Jersey market proponents of the "product price minus handling allowance" type of formula maintained that this type of formula is the one better adapted to pricing milk for manufacturing in the Northeast, and more particularly in the New York-New Jersey milkshed, than any series of prices paid dairy farmers at milk manufacturing plants located several hundred miles away in the Midwest. They testified that their receiving and manufacturing costs for Class III milk products are higher than in the Midwest because practically all milk in the supply area is eligible for fluid use, with the alleged consequence that seasonal variations in the quantities of milk available for manufacturing in Class III are much greater than in the Midwest, causing the cost of maintaining standby manufacturing facilities to be relatively high in terms of per unit output. It was contended from this that the use of a pay price series, such as the proposed "Minnesota-Wisconsin" price series, does not reflect marketing conditions in the Northeast and thus would not result in Class III prices at a level which would "clear the market".

In supporting the use of the product price minus processing allowance type of formula, proponents claimed that this formula reflects the prices that handlers under the order actually receive for the finished products, and that it is most appropriate that the processing costs of such handlers should be specifically and directly reflected in the formula.

It was testified that large quantities of reserve milk in the Northeast are used in the manufacture of ice cream and that high quality, unsalted butter and nonfat dry milk can be substituted readily for pool milk in its production, to wit., the Class III price should be based directly on the market prices of butter and nonfat dry milk.

Additional testimony was presented to show how conditions affecting the manufacture of milk in the Northeast differ from those in the Midwest. It was maintained that the Northeast and the Midwest are distinct and separate production areas. It was testified in this regard that (a) a hundredweight of milk of similar butterfat content yields less cheddar-cheese in New York State than in Wisconsin, and (b) Wisconsin milk is delivered directly from the farm to the cheese plant whereas in New York State receiving (feeder) stations receive much of the milk before it is transferred to the manufacturing plant, thus increasing delivery costs from farm to manufacturing plant.

It was stressed that butter and cheese are relatively more important uses for manufacturing milk in the Midwest while ice cream and other frozen products are the important uses of manufacturing milk in the Northeast. New York plants must maintain fluid market health approval, with resulting higher field and inspection expenses. From this it was argued that if a price series such as the "Minnesota-Wisconsin" series had been used during the fall and winter months of 1960 and 1961, any increase that would have resulted from it would have aggravated a difficult surplus situation.

One handler witness presented statistical data to show that prices paid for Class III milk in the New York-New Jersey market compare favorably with prices paid for milk for manufacturing into different specified products in nearby states. Prices paid at condensaries, creameries and cheese factories decline as distances from the states of Minnesota and Wisconsin increase. Comparisons were made for Minnesota-Wisconsin and (a) states to the East toward the Atlantic seaboard, (b) states to the South toward the deficit milk production areas in the Southeast, and (c) states to the Southwest.

The principal competitive sources of supplies for Class III milk uses were stated to be surplus quantities from unregulated markets in the Northeast, cream from states outside the Northeast and butter (as a source of fat for ice cream). From this it was concluded that since ice cream and fluid cream are the largest outlets for reserve milk in the Northeast, it is essential that the method of pricing used should keep reserve milk prices in the Northeastern Federally-regulated markets closely in line with those of competitive sources of butterfat. To accomplish this, it was proposed that any formula for the price of butterfat in reserve milk adopted be based on the price of Grade A (92-Score) butter, with preference for butter prices reported for the New York market.

The principal skim milk products manufactured from producer milk in the 11 Northeastern states are nonfat dry milk, cottage cheese, curd, and unsweetened condensed skim milk. In 1959 these products accounted for nearly 98 percent of all of the skim products produced. Nonfat dry milk can be and is sometimes used in lieu of fluid skim milk in making cottage cheese. Nonfat dry milk can be used also as a substitute for plain condensed skim milk. Proponents conclude that the market prices of nonfat dry milk are the best available measure of changes in the value of nonfat solids in reserve producer milk, and therefore, in the return to be received by producers for such milk.

In addition to such general support given to the product price minus handling allowance type of formula, each proponent presented further testimony in support of individual proposals.

The proposals to adopt a "basic" manufacturing price formula containing separate butterfat and skim milk values was supported at the hearing by one of the principal cooperatives in the New York-New Jersey market. Seasonal adjustments would be applicable when reserve milk is relatively low and a butter-cheese differential would be included in all months except August through November if seasonal adjustment is applied in the latter months. It was testified that confusion in regard to butterfat and skim milk values has resulted from the formula because they are not computed separately. Proponent claimed this confusion should be removed to reduce the number of controversies that exist in the buying and selling of manufactured dairy products. The proposed change from an average value of roller (weighted 70) and spray (weighted 30) nonfat dry milk to the average value of spray nonfat dry milk only was based on the relative importance of skim milk for nonfat dry milk manufacture in the milkshed and the fact that the bulk of nonfat dry milk being produced is spray process type. In 1960, 92 percent of the nonfat dry milk manufactured in the United States was made by the spray process.

Testimony was presented to the further effect that the seasonal adjustment factors contained in the present Class III formula should be applicable to all ten markets only during those months when the Class I utilization in the markets exceeds a specified percentage. The amount of the seasonal adjustment would be changed to 5 cents during March through June, and 10 cents during the remaining months of the year. If the seasonal adjustment factors were to be applicable during the months of August through November, then no butter-cheese adjustment would be applied during those months; however, a butter-cheese adjustment of four cents per pound of butterfat would be applicable during the remaining eight months of the year.

Another of the large producer groups testified that the present New York-New Jersey Class III price, with changes made in the relative weights given to roller and spray process nonfat dry milk

and an increase in the yield factor, should be applied as the Class II price formula under the other Northeastern orders. This proponent testified that the relative weight given to spray process nonfat dry milk should be increased while the weight given to roller process nonfat dry milk should be decreased. To support this change statistics were cited to indicate that of the total amount of nonfat dry milk manufactured, between 80 and 90 percent is by the spray process. This proponent also recommended an increase in the yield factor from the present factor of 7.8 to a factor of 8.2.

Several witnesses representing certain New York-New Jersey handlers testified that the plus seasonal factors contained in the present Class III price formula of Order No. 2 are no longer applicable in view of the general supply condition in the market during the summer and fall months. One such witness maintained there is no relationship between these differentials and production seasonality, and no attempt is made to synchronize them with either the total monthly production of pool milk or actual Class III utilization. This witness claimed also that seasonal pricing should not be used to yield producers additional returns, but rather should balance out (plus=minus) on a yearly basis.

Another witness, representing the principal handler association, concluded from a number of comparisons of pay prices for manufacturing milk for various states that an increase in the Class III price would be unwarranted and that, to the contrary, such price should be lowered to prevent further hardship to handlers. His proposals would eliminate the seasonal differentials in the Class III price formula whenever the utilization adjustment percentage in the Class I-A price formula falls below a certain level and would employ the average price of spray process nonfat dry milk minus one cent in the formula. He indicated the belief that spray quotations for the New York market in "The Producers Price-Current" would be more appropriate for use in the formula than quotations for manufacturing plants in the Chicago area. These proposals were supported on the basis that during those months in 1960 when no butter-cheese differential was applicable about three times as much milk was utilized in butter and cheese as during the corresponding months of 1959. In regard to the use of spray quotations only, he stated that because of the expansion of spray nonfat dry milk manufacture throughout the nation, it has become difficult to get representative quotations for roller nonfat dry milk. He contended also that roller nonfat dry milk prices have been more erratic in relation to the support level than in the case of spray nonfat dry milk prices, that open market roller prices recently have been higher than support prices, and that there has been a decline in the spread between spray prices and the weighted average nonfat dry milk price used in the present Class III price formula. In recommending use of the spray prices reported in "The Producers Price-Current", this

handler representative claimed that the price quotations which most nearly reflect competitive conditions in the market where handlers sell the finished milk products should be used.

A witness for New York-New Jersey ice cream manufacturers testified that recent increases in the volume of whole milk deliveries by farmers in major butter-producing areas have increased the quantities of high quality butter available, and that New York ice cream manufacturers have been able to obtain high-grade, unsalted butter for about one-half cent to one cent over the 92-score butter price at New York. He concluded that the amount added to the "butter" price average in the formula should be reduced to no more than one cent.

A representative of a major producer association in the Philadelphia market suggested that as the proportion of milk in a market disposed of in the manufacturing class increases, the class price should be increased. The need for this, it was claimed, is to discourage the addition of additional supplies above necessary current reserves and thus tend to increase the percentage of Class I utilization. Without making a specific formula proposal, he stated that the maximum Class II price deviation for the Philadelphia and Wilmington markets above or below the Order No. 2 Class III price should not be more than 25 cents per hundredweight. This witness proposed, however, that the cream price used in the Class II price formula of Orders 4² and 10³ (Philadelphia and Wilmington) should be a "weighted average" instead of a simple average of weekly "midpoint" prices of cream, in order to be more representative of actual cream values during the month.

Another recommendation of this witness, made with specific reference to Orders 4 and 10, was that milk moved to unregulated plants for manufacture into certain manufactured products, particularly butter and cheese (other than cottage or creamed), during the months of March through June should be priced at not more than 10 cents per hundredweight below the regular Class II price. It was maintained that this would produce the maximum competitive return for the milk consistent with its orderly movement into reserve uses.

Each of several proposals relating to the butter-cheese differential would have the effect of increasing the number of months each year that it could be applicable. Certain proponents testified in regard to its use in the New York-New Jersey order only, while others discussed its applicability, along with the proposed changes, to all ten markets. The basic reason given for increasing the number of months in which it could be applicable was that there are increasing quantities of milk which must go into butter and cheese during the months of August through November (the differential currently applies in the New York-New Jersey market during December through July).

² Formerly Order No. 61.

³ Formerly Order No. 110.

Other testimony relating to milk handling and processing costs. Research studies on milk processing costs at New York State "cream-nonfat dry milk" plants and at "butter-nonfat dry milk" plants in the State of Minnesota were presented by witnesses from Cornell University and the University of Minnesota.

In the New York study, 8 plants engaged in the manufacture of cream and spray process nonfat dry milk were selected. All but one of the plants were units of multiple-plant organizations operating both fluid milk plants and manufacturing plants. Daily receipts during the month of average volume averaged 250,000 pounds for the 8 plants, with a range in average daily receipts for the 8 plants of 420,000 pounds during the month of highest volume and 151,000 pounds for the month of lowest volume.

Average plant operating costs per hundredweight of milk processed at the 8 New York manufacturing plants were as follows: Month of average volume, \$0.576; high-volume month, \$0.415; and low-volume month, \$0.862. These costs included, however, only the costs of processing together with certain allocated overhead costs for the central office expenses of each of the multiple-plant firms. The additional costs for related handling functions not investigated in this study were estimated by the authors to approximate 50.5 cents per hundredweight of milk in a typical situation. The 50.5 cent estimate included the following: Feeder plant operation, 15 cents; transportation, 15 cents; plant losses, 8.5 cents; packing material, 3.5 cents; use and risk of capital, 7 cents; and selling services, 1.5 cents. Combining the average operating cost of the 8 plants for the month of average volume of 57.6 cents, and the costs associated with the related functions estimated at 50.5 cents, the total handling and processing cost would amount to \$1.081.

In the Minnesota study, data were presented regarding the operations of five typical butter-nonfat dry milk plants in Minnesota. Although data for the five plants were not shown in terms of an average, one of the plants received an average 217,000 pounds of milk per day, an amount nearly the same as the average of quantities handled by the 8 plants in the New York study. The average cost of receiving and processing milk from producers was 39.9 cents per hundredweight at this Minnesota plant.

In another case, the costs of receiving milk at a creamery, separation of the milk, processing the butterfat into butter and shipping the skim milk to a central drying plant were shown through a budgetary cost study of four creameries of varying sizes. These data included the average cost of transporting the skim milk from creameries to central drying plants plus the cost of manufacturing nonfat dry milk by spray process. Combining the costs for an average size creamery (receiving 65,000 pounds of milk per day) and at the central drying plant, including the cost of transporting the skim milk to the central drying

plant, the following total handling and processing costs were shown: Creamery processing, 23.31 cents; transportation, 8.2 cents; and central drying plant processing, 26.08 cents, making a total of 57.59 cents per hundredweight of whole milk.

Thus, the average cost of receiving and processing whole milk into cream and nonfat dry milk at 8 manufacturing plants, disclosed in the New York State study, including estimates for feeder plant handling and transportation, was about \$1.08 per hundredweight, while in Minnesota the average receiving and processing cost at a plant comparable in size to the average of the 8 New York plants, but manufacturing butter and nonfat dry milk, was about 40 cents per hundredweight, or approximately 68 cents per hundredweight less than in New York. The cost of receiving and processing butter and nonfat dry milk in the two-plant (creamery and central drying plant) combination in Minnesota amounted to about 58 cents, or about 50 cents less than in the case of the New York plants. Since butter ordinarily is more costly to process than cream, these differences presumably would be greater if the New York plants were to manufacture butter rather than cream.

It was testified further by the author witness on the Cornell University study that even with only limited changes in physical facilities, such as rearrangement of plant equipment and the introduction of additional labor saving devices, important cost savings can be realized in New York manufacturing plants.

This was illustrated by other data presented in the study which related to specifications and cost estimates for a series of model plants of different capacities for the New York-New Jersey milkshed. Of the four model plants presented, receipts at Model Plant A, the first of the four general types indicated, were the closest, but somewhat lower than, the weighted average of receipts for the 8 actual manufacturing plants. Receipts at Model Plant C were the nearest to, but larger than, the receipts at the largest of the 8 plants studied. It was testified that as the quantity of milk handled at these model plants increases the per-unit processing cost decreases.

The reported unit operating costs at Model Plants A and C (bulk tank operation assumed) during the average volume month were 50.4 cents and 28.1 cents, respectively. The operating costs for the actual plants during the average volume month were 57.6 cents and 54.3 cents, respectively. Unit costs at the two model plants, therefore, were 7.2 cents and 26.2 lower, respectively, than costs for the actual manufacturing plants. It is recognized, however, that any precise comparison between total processing costs per hundredweight of milk at actual plants and at theoretical plants, unit operating costs for Model Plant A would decrease somewhat and conversely operating costs for Model Plant C would increase to some extent.

The largest of the four general types of model plants (Plant D) could receive up to 1,200,000 pounds of milk per day.

The unit operating costs for this model plant were only 24.9 cents per hundredweight of milk during the average volume month.

The data presented for Minnesota plants also reflected theoretical model plant operations. From a comparison between processing costs for theoretical model plants and for actual plants, actual operations were found to be in close conformity (within 2 cents per hundredweight) with the hypothetical operations at model plants.

Presented also for the record was a six-part study entitled "Class III milk in the New York Milkshed." This study was referred to at the hearing as the "Clarke Study." It was a comprehensive analysis of the utilization and pricing of Class III milk under Order No. 2. The subject matter of the separate parts of the study was identified under the following titles:

(1) Manufacturing Operations; (2) Economic Description of the Manufactured Dairy Products Industry; (3) Costs of Manufacturing Dairy Products; (4) Processing Margins for Manufactured Dairy Products; (5) Processors' Decisions on Utilization; and (6) Economic Aspects of Class III Pricing.

This study was prepared as a marketing research project conducted under the general supervision of the Marketing Economics Research Division, Agricultural Marketing Service, U.S. Department of Agriculture. Direct responsibility for the collection and interpretation of data used in the study was assigned to a member of the faculty of the University of California, who testified in detail on the study at the hearing.

The study includes estimates of yields, processing costs and "partial net margins" relative to various combinations of Class III milk products. The study does not attempt, however, to break down processing costs or "partial net margins" for combinations of products into separate costs and margins for individual products or to make any allocation of input costs between individual products made at the same plant from the same milk.

The cost data used as an input in the determination of "partial net margins" for several different combinations of products were designed only for this purpose, and did not purport to represent complete cost data for any product or product combination. They were not designed to reflect average processing costs in New York milkshed plants. Marketing and administrative costs, which were determined to be similar for all Class III products, were excluded from consideration since this study was concerned only with those costs which differ among the several Class III products manufactured. The research was intended to provide information on the possible marketing effects of changes in Class III prices but was not designed as the basis for a determination of an appropriate Class III formula or price level.

Several witnesses presented testimony on relative yields of cheese in Wisconsin and in New York State, and on differences in processing costs between the two

regions. Their testimony may be typified by the following references.

A witness from Cornell University reviewed reported cheese yields at three large cheese manufacturing firms in northern New York State during the cheese-manufacture seasons in 1959 and 1960. The weighted average cheese yield for these firms for the two seasons was stated to be 9.02 pounds (37 percent moisture) per hundredweight of 3.5 percent milk.

This yield of 9.02 pounds, based on data reported by the plants, was then compared with yields of cheese of similar moisture content from 3.5 percent milk reported for 12 Wisconsin cheese factories in a research study made at the University of Wisconsin. The Wisconsin study cited an average cheese yield of 9.84 pounds per hundredweight. Cheese yields in Wisconsin, therefore, were found to be 0.82 pounds per hundredweight greater than in New York. No specific reason was given for the stated difference in cheese yields.

Several manufacturers of Cheddar cheese and other cheeses in New York State presented additional data designed to demonstrate higher costs of manufacturing cheese in New York State than in the Midwest. One such manufacturer also operates a cheese plant in Vermont where milk priced at the Boston Class II milk price is the source of supply for cheese manufacture. Cheese yields from Vermont milk were compared with cheese yields from northern New York milk, which comparison involved higher butterfat content in Vermont and widely varying (up to 25 percent difference) moisture content of the cheese manufactured in the two states.

The company made no complaint about the cost of milk for cheese in the Vermont plant although in 1960 the level of the Boston Class II price exceeded the butter-cheese differential price under order No. 2 by an average of 24 cents per hundredweight and was computed in a manner quite comparable to the formula adopted herein.

This company also testified that it pre-determines how much New York Cheddar cheese it will need during the year, and once that volume has been produced their New York State plants are closed regardless of the prevailing price of milk for this use. Further, that even if the butter-cheese differential under order No. 2 were extended to include more months (causing a price reduction), they would not manufacture more cheese in New York State during the year, but would only extend their operations to include more months.

The Director of the Bureau of Accounts and Statistics of the Pennsylvania Milk Control Commission also testified at this hearing. This witness recommended that the open market fluid cream quotations, which are announced for the Philadelphia market by the Agricultural Marketing Service, U.S.D.A., be changed to include only cream that is actually used as bottling cream or in producing ice cream in the Philadelphia market. He stated that this could increase the price of Class II milk by an amount equivalent to 11.76

cents per hundredweight to Pennsylvania producers and would be a method of making manufacturing prices more realistic throughout the region. He recommended also that nonfat dry milk prices be quoted for the spray process only.

Testimony of proponents of the competitive pay price type of formula. Although discussed later in more detail, the general considerations by proponents of competitive pay prices as a proper basis for pricing Class III milk are cited in the following paragraphs.

The major reasons presented by those supporting a competitive pay price series for pricing reserve milk in Northeastern markets were that (1) it would remove the Secretary from the role of "rate-making" and eliminate the need for making several judgments concerning the particular products (price quotations), the yield factors for such products, and appropriate "make allowances" to be used in the formulas, (2) competitive pay prices provide for automatic adjustments over time concerning needed changes in processing and marketing allowances resulting from dynamic competitive conditions and improved technology in the industry, and (3) such a series goes directly to current market values of milk as received from farmers for manufacturing use, is determined from current competitive conditions in milk procurement, and makes possible avoidance of problems involved in determining the separate values of the butterfat and skim milk ingredients in milk delivered by farmers.

Testimony was presented by representatives of Midwestern milk manufacturers to the effect that reserve milk in regulated markets of the Northeast, and particularly in the New York-New Jersey market, has not been priced competitively with Midwestern milk and that the relatively low Northeastern market prices of milk used for manufacture have damaged the competitive position of Midwest milk product manufacturers. They contend that the Federal government has conflicting policies with respect to its nation-wide price support program for dairy products on the one hand, and levels established for reserve milk prices in Northeastern Federal order markets on the other.

Midwest dairy interests also maintained that increases in the production of manufactured products in the Northeast has had a depressing effect on the national market for manufactured products, especially butter, nonfat dry milk and cheddar cheese. In support of this claim it was testified that manufacturers of milk products in the Midwest region had lost sales to lower-priced products manufactured from Class III milk in the New York-New Jersey market. They contended that an objective of pricing milk under a Federal order is to protect producer returns but not to maintain particular handler plants or cooperative associations which may not be able to withstand competition from other manufacturers of milk products. Testimony was presented to demonstrate the relative efficiency of Midwest manufacturers in the manufacture of butter and nonfat

dry milk. Such testimony (Minnesota research study) was discussed previously in conjunction with other research studies presented for the record.

One such witness testified that the effect of maintaining a high Class I price in a Federal order market under classified pricing, while at the same time establishing a low reserve milk price which guarantees an ample margin to pool handlers of reserve milk, is, in effect, subsidization by the consumers of fluid milk of milk production for manufacturing uses. It was stated further that whenever the manufacturing milk price assures handlers under regulation a profitable margin, it follows that the amount of milk used in manufacturing increases and dilutes the effect of the Class I price on maintaining returns to producers through the medium of the uniform price.

One of the large producer cooperative associations in the New York-New Jersey market also testified in support of using a competitive pay price series. In support of its position five principles and objectives to achieve desirable reserve milk prices under Federal milk orders were set forth. These were to (1) promote adequate supply; (2) coordinate manufacturing operations with overall functions of the market (i.e., to balance and channel supplies and to process reserves); (3) influence procurement policies of handlers so that they do not procure additional milk from producers when the market reserve is unusually large; (4) facilitate the movement of milk between markets; and (5) promote efficiency in procurement, processing and marketing. This association proposed and supported adoption of the Minnesota-Wisconsin price series as the basis for pricing Class III milk (and Class II milk) in the Northeastern markets.

Representatives of the New England cooperatives and the largest proprietary handler of milk for manufacturing uses in the New England Federally-regulated markets proposed adoption of the "U.S. Average Manufacturing Grade Milk-Price Series" for pricing reserve milk under all ten Northeastern Federal orders, pointing out that such price series is used currently as the basis of pricing in the New England Federal order markets. These witnesses testified that the markets of New England and New York-New Jersey are highly competitive in respect to the sale of cream, ice cream, ice cream mix, cottage cheese and condensed milk. (This competition is further described in a subsequent part of this decision.)

A witness representing a major New England handler who manufactures large quantities of ice cream expressed a contrasting view from that expressed previously in this decision by the witness for New York ice cream manufacturers. This witness claimed that in the experience of his company prices for unsalted butter usually are about three cents above published butter market quotations. Another witness from New England testified that New England ice cream manufacturers have paid premiums for butterfat for use in ice cream

in excess of 2 cents over the New York butter price.

Such representatives further testified that the pricing of reserve milk on competitive pay prices, as represented by the above-stated price series as the price mover, over a substantial period of time has assisted the New England markets to improve efficiency in the handling and processing of reserve milk supplies under regulation.

Competitive pay prices as the appropriate basis for establishing the general level of the Class III price in the New York-New Jersey market. The Secretary, in carrying out the responsibility placed on him by the statute to establish an appropriate method of fixing reserve milk prices, must decide, on the record evidence, between a "product price minus handling allowance" type of formula (involving the merits of the several variations in such formula as previously described) and a "competitive pay price series", which involves selection of the price series most appropriate in the circumstances as a "price mover" and determination of the amount of any differential that the minimum level of reserve milk prices under the orders should vary from the competitive pay price level.

The present butter-nonfat dry milk price formula contains two yield factors, two price series, and the manufacturing or processing allowance. Each affects the resulting price. In the case of a well-operated plant, using all of its milk in the manufacture of butter and creamery by-products, management should be able to ascertain, with a high degree of accuracy, yields of butter and nonfat dry milk per hundredweight of whole milk. In such cases figures would be available also on the average price received per pound of each product sold from the plant. With cost accounting procedures, receiving and processing costs at such a plant may be determined with accuracy.

The accurate determination of such data on a market-wide basis is complicated, however, by additional factors affecting handling and operational costs which are not, on the basis of the hearing evidence, susceptible of precise appraisal or measurement for the entire market. In the New York-New Jersey market substantial proportions of the producer milk received are shipped as milk, skim milk, or cream from country-located plants to fluid milk distributing plants during the year. Volumes of milk shipped from such country receiving stations, or feeder plants, to bottling plants vary substantially from day to day and from plant to plant. The fact that all milk received at a country receiving station, or feeder plant, is not used there, but is moved elsewhere for butter, cheese, or other Class III use, necessarily means that some allocation of cost between handling for the fluid market and handling for Class III processing must be made for such plants. This problem exists with respect to operations involving a large proportion of the milk supply available for Class III uses and none of the data submitted to show receiving and processing costs involved in manu-

facturing operations in the New York-New Jersey milkshed provide the basis for a reasonably accurate appraisal or reliable estimate of such cost allocation. Obviously, all costs of operating such stations should not be assessed to the manufacturing operation only sometimes served.

Although the apparent difference in processing costs between Minnesota and New York plants as shown by the two studies cited previously, amounts to more than 50 cents per hundredweight of milk, handlers subject to the New York-New Jersey order have been paying prices for milk used in butter and cheese within a range of 13 to 20 cents less annually than prices in Minnesota for manufacturing grade milk of the same butterfat content. It is the latter differences in price that are the center of the controversy. If handlers subject to the New York-New Jersey order experience processing costs that are at least 2½ times greater than the difference in the prices of milk between the regions, a logical conclusion would be that from an economic standpoint they could not manufacture butter with order No. 2 milk. In 1958, however, nearly 605 million pounds of order No. 2 milk were utilized in the manufacture of butter. This amounted to 6.0 percent of the total producer milk classified under the order. In 1959 and 1960, the amounts so used were 460 million and 897 million pounds, respectively, or 4.5 and 8.4 percent of total producer receipts.

While proponents of the product-handling allowance type of formula maintained that the processor must be reimbursed for his costs, even those who suggested a reduction in the Class III price did not propose, and past acceptance of milk by handlers at the prices prevailing certainly denies, that the difference in processing costs between the regions, exceeding 50 cents per hundredweight, shown by the studies would be properly reflected in a Class III pricing formula. Further, there is wide disparity between the cost allowances contained in the specific proposals offered by proponents of the product-handling allowance type of formula and the cost data provided by the study covering New York State plants. The paradoxical circumstances present create substantial doubt that any cost allowance could be developed from the evidence that would give reasonable assurance of providing, over time, a fair value for producer milk under an administered pricing program.

The problem of securing specific data to properly determine the appropriate components of the formula, and particularly the make allowance to be reflected, is only one shortcoming of this method of pricing milk for manufacturing purposes in the New York-New Jersey milkshed under present conditions. Because a wide variety of products is included in Class III milk, a formula based only on the prices for butter and nonfat dry milk does not accurately reflect the full value of producer milk for all Class III uses. For example, the value of milk for cheese is not reflected in the present formula although much cheese is produced in the Northeast, and especially in the New York-New Jersey milkshed.

It would be difficult, indeed, to conclude that New York-New Jersey Class III (butter-nonfat dry milk) formula fully compensated New York-New Jersey producers last winter when the market for milk for cheddar cheese was generally strong.

Another problem with the present type of Class III formula is the lag in its adjustment to cost and technological changes affecting the manufactured products industry. Technological changes have resulted in some significant cost reductions during recent years. Changes which reduce costs of assembling, processing, packaging or merchandising milk and milk products do not have automatic, or even necessarily prompt, reflection in such formula. Such changes are not reflected in formula prices until order amendments are made. With proper adherence to administrative rules and procedures, rapid action in this connection may not be assured for a particular market or group of markets.

When the Class III price formula is based primarily upon the market price of one of these products (e.g., butter) minus a specified processing allowance, handlers under the order are assured, regardless of current values of producer milk competitively procured for the several manufactured product uses in Class III, of a predetermined operating margin. On the other hand, unregulated processors handling manufacturing grade milk pay a price to dairy farmers to maintain milk supplies determined from competition with other processors. When sudden price changes occur in the butter market, for example, manufacturers of butter, buying in competition with manufacturers of other products are not necessarily able to effectuate an immediate offsetting adjustment in pay prices to their farmers. When prices under the order are based on butter prices handlers, however, have the benefit of an offsetting adjustment automatically reflected in the price they pay for the milk. This is an advantage not available to manufacturers purchasing unregulated milk.

Regardless of the immediate relationship of the open market prices of various manufactured products to the competitive values of raw milk at unregulated plants, regulated handlers obviously are not subjected, under the present formula, to the same pressure to adjust to cost and technological changes affecting the unregulated portions of the manufactured products industry. This situation could be self-perpetuating in regulated markets, such as in the Northeast, where in the supply areas involved there are relatively minor quantities of unregulated milk to be manufactured, and the prices of most milk so utilized are administered by public authority. Such circumstances make important, in the public interest, that the administered price be one which is reflective of and promptly responsive to competitive conditions generally prevailing in the manufactured products segment of the dairy industry. The competitive pay price method meets this requirement.

The competitive pay price method of pricing milk is based upon the premise

that in the existing highly competitive dairy industry, concerns buying in competition tend to purchase milk from farmers at prices commensurate with the ability of the more efficient concerns to pay for milk. As shifts in the relationship between finished product prices are indicated, one group of processors may be able to pay higher prices than others. Other processors must meet or approximate these prices or risk loss of milk supply. If a dairy concern in the unregulated manufactured products market fails to make the necessary adjustments in procurement competition, it will, in time, be forced out of business.

Increasing labor and other costs may tend to reduce prices paid farmers for milk. The use of new assembling, processing, packaging and marketing techniques which reduce plant-operating costs, or increase product returns, will tend, on the other hand, to increase the demand for the farmers' milk and thus the prices paid for such milk. These upward and downward price adjustments resulting from procurement competition are directly and automatically reflected in reserve milk prices when based on average competitive pay prices, thus tending, at any given time, to reflect the full value of milk for the basic manufacturing uses.

Much of the evidence presented at the hearing on the use of competitive pay prices as the Class III price formula centered on the so-called "Minnesota-Wisconsin Manufacturing Grade Milk-Price Series" (hereinafter referred to as the "Minnesota-Wisconsin series"). Principal questions raised in connection with this price series were whether the Department would be in position to announce within 5 days after the end of a given month a price which would be satisfactorily representative of prices paid to dairy farmers by manufacturing plants in the two-state area, and whether such a series, even if representative of conditions in such states, would be appropriate for pricing milk under conditions prevailing in the New York-New Jersey milkshed. Opponents of the series contended that a period of time should elapse before any such price series is employed in the pricing of over 7 billion pounds of milk per year, the approximate amount of milk in manufacturing uses under regulation in the Northeast, since the series had not yet been published (at the time of the hearing) and therefore had not been subject to appraisal over time.

The States of Minnesota and Wisconsin represent the two large areas of predominantly "manufacturing grade" milk in the country. Approximately 50 percent of the total manufacturing grade milk sold off farms in the U.S. is produced in these two States. In Minnesota about 80 percent of the milk sold off farms is manufacturing grade while in Wisconsin it amounts to 65 percent of the milk produced. There are approximately 900 plants in Wisconsin that buy manufacturing grade milk, and in Minnesota there are about 425 such plants. Competition among processors for supplies of manufacturing milk is generally strong in both States.

PROPOSED RULE MAKING

Starting in January 1959 the Agricultural Estimates Division of the Department began publication of a series of prices for manufacturing grade milk, by States, each month in the Department's regular publication, "Agricultural Prices". At the time of the hearing, preliminary estimates of prices paid in each State for a given month were being published near the end of the following month. The prices, so published, are not available in time for use in determining minimum class prices under Federal orders. It is officially noticed, however, that beginning with September 1961 the two-State "Minnesota-Wisconsin series" has been published on or before the 5th day of the month following that for which the price is computed. This series is available for use in pricing milk under Federal orders and was adopted for this purpose in the milk order for the Chicago marketing area (official notice taken) effective September 1, 1961.

Manufacturing grade milk price information for Wisconsin and Minnesota is collected through the facilities of the Federal-State Crop Reporting Office in Madison and St. Paul, respectively. This information is obtained by mail questionnaire. Representatives of the Agricultural Estimates Division, although not proponents of the series for use in pricing milk under any of the ten Federal orders, described on the record a new statistical technique which in their judgment as statisticians would result in a representative price estimate which could be announced within five days after the end of the month for which computed. Reports from 200-220 plants that purchase from 20 to 22 percent of all manufacturing milk in the State of Wisconsin are available each month, while in Minnesota reports covering about 70 percent of all producer sales are similarly available. These prices, as reported for the preceding month, serve as the "benchmark" for computing a combined Minnesota-Wisconsin average price of manufacturing milk for the "current" month (month for which the minimum class price is computed).

The price change from the "benchmark" month to the current month is then measured. This involves collecting available current month data from a "sample" of about 100 plants in the two-State area. These data include quantities of milk being purchased, pounds of butterfat and total dollars paid for milk delivered the first half of such month. For the last half, to the extent possible, individual plant estimates are furnished by plant managers. On the basis of these data, current month price and butterfat test estimates are prepared.

For plants in each state separately, prices and tests are weighted within each product group (butter-nonfat dry milk, cheese, evaporated milk, etc.) by the quantities of milk purchased from farms to obtain weighted averages by product groups. This is done both for the current month and the benchmark month.

Product group averages are then weighted by their relative importance in the state total to obtain a statewide average for all milk of manufacturing

grade. The average prices and butterfat tests for the two states are then combined into a weighted average price and test for the two-State area.

Industry proponents of this particular series of competitive pay prices were satisfied that such techniques would result in a representative manufacturing milk price series for Minnesota and Wisconsin plants. They maintained further that purely local conditions are no longer an adequate basis for pricing milk in manufacturing uses and that inter-regional relationships of prices, which must be recognized, would be recognized properly through use of such series for reserve milk pricing in the Northeastern markets.

It is concluded, however, that although the Minnesota-Wisconsin series is satisfactorily representative of the pay prices in the two-State area and has been adopted already for Class III pricing purposes under the Chicago milk order, it should not be used to determine the price of Class III milk in the New York-New Jersey market at the present time. Although there is no apparent reason why it could not be adapted to the pricing of reserve milk in the Northeastern markets with equitable results, there is no urgency which should deny the industry its request for an opportunity to examine the series in use and to compare its results with other price series and formulas which are available for pricing under regulation.

The "U.S. Average Manufacturing Grade Milk-Price Series" (hereinafter called the "U.S. average price"), on the other hand, has been published continuously since 1946 by the Department and is a widely known and accepted series of competitive pay prices. It is published by the Agricultural Estimates Division in "Agricultural Prices" on a preliminary basis near the end of each month. In

computing this average price, separate prices are first determined for each of the three principal uses covered, i.e., butter-nonfat dry milk, cheese and evaporated milk. These prices are then volume weighted according to the relative quantities of manufacturing grade milk going into such uses. The weights used in 1960 were: Butter, 43 percent; American cheese, 39 percent; and evaporated milk, 18 percent.

It is the "national average" price series which is used in establishing the parity equivalent for manufacturing milk and therefore is directly involved in the determination of support prices for dairy products. The use of this series in computing the reserve milk prices in the Northeastern markets should provide, therefore, a reasonable and equitable basis for determining appropriate monthly price changes.

The use of the U.S. average price as the basis for pricing reserve milk in some of the fluid milk markets in the Northeastern area is well established. It has been the basis for determining the value of producer milk for Class II uses under Federal regulation in the New England markets regularly (except for two months) since May 1, 1957. Between 1951 and 1957 the U.S. average price shared with the "Boston weighted average cream price" in the performance of such price function.

In the New England markets, the annual level of the Class II price, including seasonal adjustments, averages (simple) 6.4 cents per hundredweight over the U.S. average price. The U.S. average price, the Minnesota-Wisconsin series, the Boston Class II prices, the announced New York-New Jersey Class III prices and the Philadelphia Class II prices per hundredweight may be compared as follows on a 3.5 percent butterfat basis:

	Annual averages				
	1960	1959	1958	1957	1956
Minnesota-Wisconsin series ¹	\$3.12	\$3.01	\$2.99	\$3.10	\$3.06
Boston Class II prices ^{1,2}	3.10	3.01	2.98	3.05	2.96
U.S. Average Price Series ¹	3.04	2.93	2.91	3.01	2.98
New York-New Jersey Class III ^{2,3}	2.94	2.96	2.94	3.06	2.99
Philadelphia Class II ^{2,4}	2.84	2.96	2.90	3.14	2.99

¹ Adjusted to 3.5 percent butterfat test by Boston order butterfat differential.

² For plants located 201-210 miles from the basing point in the marketing area.

³ Class III price without butter-cheese differential.

⁴ Adjusted to 3.5 percent by Philadelphia order butterfat differential.

The annual U.S. average price averages approximately 8 cents below the Minnesota-Wisconsin series. The New York-New Jersey annual average Class III price, on the other hand, was higher than the U.S. average price by one cent in 1956, by five cents in 1957, by three cents in 1958, and by three cents in 1959. In 1960, however, the U.S. average price averaged 10 cents higher than the New York-New Jersey Class III price for the year.

The Boston annual average Class II price was lower than the New York-New Jersey Class III price by three cents and one cent in 1956 and 1957, respectively, but in 1958 and 1959 the Boston Class II price averaged four cents and five cents, respectively, over the New York-

New Jersey Class III price. In 1960, the Boston Class II price increased to a level 16 cents over the New York-New Jersey Class III price.

The annual average Class II price in the Philadelphia market was equal to the New York-New Jersey Class III price in 1956 and 1959, was higher in 1957 by eight cents, and was lower in 1958 and 1960 by four and ten cents, respectively. The Philadelphia Class II price, like New York-New Jersey Class III price, was higher than the U.S. average price during the period from 1956 through 1959, except for 1958 when it was one cent lower. In 1960, however, it declined to a level 20 cents below the U.S. average price.

During the four years 1956-59 Class III prices in the New York-New Jersey market averaged about 3 cents over the U.S. average prices. Only in 1960 did the Class III price fall substantially below U.S. average price plus the 6.4-cent differential used in the Boston formula.

Use of the U.S. average price as the price mover will tend to keep Class III prices in consistent relationship to the general level of prices being paid to farmers for manufacturing milk. Since the U.S. average price has been fairly consistently 8 cents lower than the Minnesota-Wisconsin series on an annual basis, the resulting New York-New Jersey Class III prices in the 201-210 mile zone should move in reasonable relationship to prices in Minnesota and Wisconsin.

It is appropriate, nevertheless, to continue seasonality in the pricing of reserve milk in the New York-New Jersey market. During the late winter and spring months when relatively greater quantities of reserve milk are available and must be utilized in the hard or storable products, the Class III price should be such that manufacturers of storable products share in the utilization of the available supplies. Manufacturers of butter and cheddar cheese should not receive a preferential price, however, with the effect that much of the competition in procurement from manufacturers of soft products is minimized or eliminated. The latter manufacturers, who provide a year-round outlet for reserve milk should not be disadvantaged in procurement in the months of seasonally heavy production by being required to pay a higher price than butter and cheese manufacturers during these months.

More seasonality in the pricing of reserve milk than is contained in the U.S. average price is needed in the Northeastern markets for the added reason that it will encourage handlers to dispose of the maximum amount of milk in Class I uses. Prices during the fall months should not be so high as to prohibit the necessary operating reserves of milk from going into manufacturing uses, but nevertheless should be at such a level that handlers will seek Class I sales rather than to use the milk in manufacturing. Further, during the fall months of the year, when the supply of milk available for manufacturing is used to a greater extent in the production of nonstorable (soft) products, the reserve milk price under the orders should reflect also this higher-valued use.

During the three-year period from January 1958 through December 1960, the New York-New Jersey Class III price (other than butter and cheese) deviation between the highest average monthly price and lowest average monthly price was 26 cents. The month with the lowest three-year average price was June with an average price of \$2.80 per hundredweight. November was the month with the highest three-year average price of \$3.06. If the seasonal variation in the price of milk for butter and cheese is reflected in the regular Class III price (an additional 14 cents

per cwt.) it would increase the seasonality of the Class III price to 40 cents. A range in the Class III price of 40 cents from the month of highest price to the month of lowest price compares with the current seasonal range of 46 cents in the Boston Class II prices during the same three-year period. The monthly seasonal adjustments to the U.S. average price as contained in the current Boston Class II formula range from minus 12 cents during the month of May to plus 17 cents during the months of August, November, and December. To bring monthly reserve milk prices in the northeastern markets more nearly in line with the monthly U.S. average prices and the prices of manufacturing milk in the Midwest than has been the case in the past, a small reduction in such ranges is appropriate. It is concluded that the seasonal adjustments to be applied to the monthly U.S. average prices (which result in an annual (simple) average level 5.4 cents higher than such price) should be as follows:

Jan.....	\$+0.8	July.....	\$+0.08
Feb.....	+0.07	Aug.....	+0.15
Mar.....	.00	Sept.....	+0.11
Apr.....	-.04	Oct.....	+0.11
May.....	-.07	Nov.....	+0.11
June.....	-.06	Dec.....	+0.11

These seasonal adjustments, applied to the three-year period 1958 through 1960, would have resulted in a seasonal variation in prices averaging 37 cents. The resulting monthly prices, on the three-year average, would have varied from the average of Minnesota-Wisconsin prices by the following amounts:

Jan.....	\$0.00	July.....	\$+0.02
Feb.....	+0.03	Aug.....	+0.09
Mar.....	-.04	Sept.....	.00
Apr.....	-.09	Oct.....	-.01
May.....	-.15	Nov.....	.00
June.....	-.14	Dec.....	+0.02

These monthly variations between the reserve milk prices in the Northeast and the Minnesota-Wisconsin pay prices are reasonable in view of the greater seasonality of reserve milk available in the northeastern markets and the need for channeling milk to Class I uses when needed.

The U.S. average prices adjusted by the monthly seasonal adjustments may be compared with the monthly Class III prices which have existed in the New York-New Jersey market. In the following table are shown the proposed monthly prices and the announced Class III prices for the three-year period 1958 through 1960, for 3.5 percent milk, f.o.b. plants in the 201-210 mile zone.

	1958			1959			1960		
	Proposed price, including seasonal adjustments	N.Y.-N.J. class III ¹	Proposed, minus N.Y.-N.J.	Proposed price, including seasonal adjustments	N.Y.-N.J. class III ¹	Proposed, minus N.Y.-N.J.	Proposed price, including seasonal adjustments	N.Y.-N.J. class III ¹	Proposed, minus N.Y.-N.J.
January.....	\$3.11	\$3.07	\$0.04	\$3.00	\$2.87	\$0.13	\$3.07	\$2.92	\$0.15
February.....	3.09	3.07	.02	3.03	2.87	.16	3.12	2.91	.21
March.....	3.00	3.02	-.02	2.94	2.85	.09	3.04	2.88	.16
April.....	2.79	2.88	-.09	2.87	2.84	.03	2.97	2.88	.09
May.....	2.75	2.79	-.04	2.80	2.82	-.02	2.87	2.83	.04
June.....	2.76	2.78	-.02	2.80	2.80	.00	2.87	2.82	.05
July.....	2.92	2.87	.05	2.96	2.91	.05	3.02	2.89	.13
August.....	3.03	2.91	.12	3.05	3.00	.05	3.14	2.94	.20
September.....	3.03	3.00	.03	3.03	3.12	-.09	3.21	3.03	.18
October.....	3.03	2.94	.09	3.06	3.12	-.06	3.24	3.04	.20
November.....	3.01	2.93	.08	3.13	3.18	-.05	3.29	3.08	.21
December.....	3.07	2.97	.10	3.12	3.09	.03	3.23	3.04	.24
Annual average..	2.97	2.94	.03	2.98	2.96	.02	3.09	2.94	.15

¹ Does not include butter-cheese differential. Butter-cheese differential prices are 14 cents less than class III prices during the months of March through June and 10 cents less during the months of July and December through February. In 1958 only, the month of August also had a 10-cent butter-cheese differential.

The monthly seasonal adjustments adopted result in Class III prices nearly identical with the present Class III prices (other than butter and cheese) during the months of May and June over the three-year period. For the months of April and July, over the same period, the new formula yields a level of prices closely related to prices under the present Class III formula.

During the late summer, fall and winter months, the new formula results in prices which, on the average during this three-year period, exceeded actual Class III prices by somewhat greater amounts. It is during these months, however, when Class III milk should be priced at a somewhat higher level since it is used mostly in higher-valued products and competitive milk and milk products also carry higher prices. The higher level is needed also to encourage handlers to utilize the milk in Class I outlets.

The new formula will have the greatest effect in the New York-New Jersey mar-

ket upon the prices for milk utilized in the manufacture of butter and cheese during April through July. During April, May, and June the price of milk used in butter and cheese will be increased 14 cents per hundredweight and in July, 10 cents per hundredweight plus any increases that apply in connection with regular Class III milk. Over the three-year period 1958-1960, the average increase in the regular Class III price would have been April, \$0.01; May, \$0.01; June, \$0.01; and July, \$0.04.

The U.S. average price, as so adjusted seasonally, will reasonably reflect monthly changes in the value of milk for the particular "product mix" of reserve milk in the Northeast.

While the "product mix" reflected in the U.S. average price represents a lower-valued "product mix" than that generally prevailing in the Northeast, such competitive pay price, which reflects the value of milk used in the manufacture of "hard products", will also reasonably

reflect changes in the value of milk used in, or to manufacture products competitive with, the "soft products" made from manufacturing milk in the Northeast.

The U.S. average price is based to a substantial degree on the use of milk for butter-nonfat dry milk and cheese. This, however, is a lower-valued "product mix" than the "product mix" of the Northeastern markets, which consists largely of ice cream, ice cream mix, cottage cheese and other "soft products", generally considered to represent higher-valued outlets. Manufacturers of "soft products" and handlers of cream in the major production areas of Minnesota and Wisconsin are in competition with manufacturers of the "hard products" for their milk supplies. It may not be reasonably concluded that "soft product" manufacturers in either the Northeast or Midwest can procure milk for less than competitive "hard product" manufacturers.

It is butter-nonfat dry milk and cheese that are considered the residual, or marginal, uses of milk both nationally and in the Northeast, into which milk must find a market when the demands for the higher-valued products have been satisfied. As previously indicated, the U.S. average price is the basis for computation of the support prices for butter, nonfat dry milk and cheese as the residual products of milk nationally.

In opposing competitive pay prices for formula uses, New York-New Jersey handlers maintained that it is the local supply and demand conditions in the regulated market that are the controlling statutory factors in establishing prices for Class III milk as well as the prices of other classes under the order.

In its decision in the "United States v. Rock Royal Co-operative, Inc., et al." case relating to the New York order and the classified pricing plan provided therein (official notice of which is taken), the Supreme Court of the United States recognized that the products made from reserve milk in the New York-New Jersey market not only are affected by, but also affect, the national market for such products:

"It is generally recognized that the chief cause of fluctuating prices and supplies is the existence of a normal surplus which is necessary to furnish an adequate amount for peak periods of consumption. This results in an excess of production during the troughs of demand. As milk is highly perishable, a fertile field for the growth of bacteria, and yet an essential item of diet, it is most desirable to have an adequate production under close sanitary supervision to meet the constantly varying needs. The sale of milk in metropolitan New York is ringed around with requirements of the health departments to assure the purity of the supply. Only farms with equipment approved by the health authorities of the marketing area and operated in accordance with their requirements are permitted to market their milk. More than sixty thousand dairies located in the states of New York, Connecticut, Massachusetts, Maryland, New Jersey, Pennsylvania and Vermont hold certificates of inspection and approval from

the Department of Health of the City of New York. More than five hundred receiving plants similarly scattered have been approved for the receiving and shipping of grades A and B milk. Since all milk produced cannot find a ready market as fluid milk in flush periods, the surplus must move into cream, butter, cheese, milk powder and other more or less nonperishable products. Since these manufacturers are in competition with all similar dairy products, the prices for the milk absorbed into manufacturing processes must necessarily meet the competition of low-cost production areas far removed from the metropolitan centers. The market for fluid milk for use as a food beverage is the most profitable to the producer. Consequently, all producers strive for the fluid milk market. It is obvious that the marketing of fluid milk in New York has contacts at least with the entire national dairy industry. The approval of dairies by the Department of Health of New York City, as a condition for the sale of their fluid milk in the metropolitan area, isolates from this general competition a well recognized segment of the entire industry. Since these producers are numerous enough to keep up a volume of fluid milk for New York distribution beyond ordinary requirements, cut-throat competition even among them would threaten the quality and in the end of the quantity of fluid milk deemed suitable for New York consumption. Students of the problem generally have apparently recognized a fair division among producers of the fluid milk market and utilization of the rest of the available supply in other dairy staples as an appropriate method of attack for its solution. Order No. 27 was an attempt to make effective such an arrangement under the authority of the Agricultural Marketing Agreement Act."

Concern was expressed also by New York-New Jersey handlers that any increase in the Class III price would tend to raise uniform, or blended, prices to producers, stimulating a production response and therefore an increase in the quantity of milk to be used in Class III products. It was contended that reserve milk prices might well be reduced somewhat, rather than increased, in order to encourage a reduction in deliveries of milk by producers or at least to discourage further increases in deliveries.

The percentage of Class III utilization is such that for any given change in the level of the Class III prices a corresponding change in uniform prices of approximately 40 percent of the change in the Class III price will result. The above contention of handlers is not persuasive, however, in the present situation. Certainly it may not be concluded that a price for milk for manufacturing use only slightly above the national level of prices for ungraded milk would be sufficient to encourage an adequate supply of high quality milk as needed for the New York-New Jersey fluid market. An equitable price for milk for manufacture cannot be denied simply because it might result in some increase in the blended price, and particularly so when an outlet for any increased supply is available under the price support program.

Further testimony was presented to the effect that Midwestern milk production has generally contributed far more to the national milk surplus than has Northeastern milk production since milk used in manufactured dairy products, other than ice cream, in the eleven Northeast states amounts to only 5 percent of the total for the United States. From this New York-New Jersey handler representatives argued that complete discounting of the butter, cheese and nonfat dry milk produced in the Northeast would leave in excess nationally an overwhelming percentage of each of the surplus commodities purchased by the Government for price support purposes, and therefore, that the national price level for manufactured milk products is little affected by the prevailing prices for manufacturing milk in the Northeastern markets, particularly the New York-New Jersey market.

Under the dairy products price support program, the Federal government offers to purchase butter, cheese and nonfat dry milk at specified prices. These prices are established at a level which will reflect, on the nationwide average, a specified percentage of parity to dairy farmers deemed reasonable under national policy. The need for this program arises from an excess of milk and milk products produced in the United States over the amounts that can be sold through commercial outlets and still return the appropriate percentage of parity prices to farmers. This is a nationwide program as equally applicable to dairy farmers of the Northeast as to those in any other part of the United States. Products such as butter, cheese and nonfat dry milk, purchased under the support price program, are produced in sizeable quantities in the Northeast and are sold in the national market in direct competition with similar products from other parts of the nation, particularly the Midwest.

Government support purchases during the 5-year period from 1956 through 1960 amounted to only 3.5 percent (on a milk equivalent basis) of the total milk produced in the United States during this period. (Official notice taken of the November 1961 issue of "The Dairy Situation" published by Economic Research Service, USDA, page 41.)

This was the average percentage of the national milk production in surplus which indicated the need for support prices in order that reasonable prices could be returned to farmers. Under the support program, it is immaterial where the largest quantities, or percentages, of dairy products are produced. It is of great significance to dairy farmers, however, that surpluses of dairy products do exist and that these surpluses can undermine the entire structure for the milk used in their production.

While New York-New Jersey handler representatives maintained that manufactured products made from Class III milk under Order No. 2 are a relatively insignificant proportion of the national surplus, and therefore do not depress prices to other processors or to Midwestern dairy farmers, such handlers nevertheless complained strongly concerning

competition in ice cream mix from a plant regulated under the Washington, D.C., order which sells, in terms of the entire New York-New Jersey ice cream market, a very minor percentage of ice cream mix in such market, contending that sales from this plant demoralize the price structure for all ice cream mix sales in Metropolitan New York and Northern New Jersey.

Both grounds cannot be accepted as proper basis for the proposition that no substantial change should be made in the New York-New Jersey Class III price level. The national competition in manufactured dairy products is not, in our view, dissimilar to the kind of competition in Class III milk products which is found to prevail among markets in the Northeast.

The New York-New Jersey handler proponents of the continuance of the butter-nonfat dry milk formula requested that certain prior decisions of the Department on Order No. 2 amendments be taken into account as further evidence supporting their proposals and for denying the use of a competitive pay price series for pricing Class III milk. Official notice was taken at the hearing of all previous decisions and order amendments, as they affected Class III pricing, back to and including the decision leading to the amendment of April 1, 1949.

Review of these decisions has been made, particularly with respect to (a) level of Class III prices; and (b) importance and justification of employing butter and nonfat dry milk prices as the monthly movers in the Class III price formula.

In several of these previous decisions, it was found, on the particular evidence under review, that while the prices paid at unregulated plants were a reliable guide for determining the level of the Class III price, the product prices (butter and nonfat dry milk) were preferred to reflect month-to-month changes in the value of products made from Class III milk, or which could be substituted for producer milk in the manufacture of certain Class III products.

The value of competitive pay prices as an appropriate method of fixing Class III prices under the regulation was repeatedly recognized, but in the particular circumstances shown by the testimony, it was concluded in the several decisions that prices of products which could be made from Class III milk, or substituted for it, should be given preference as the basis of the formula. It is noted, however, that in the decision of June 10, 1957, the Acting Secretary concluded that, "Dairy product prices and yield factors employed in the Class III formula are designed primarily to reflect changes in the market value of products made from Class III milk, and purport to constitute only an approximation of the actual returns to handlers from the sale of products made from Class III milk" (emphasis supplied). It is clear from review of past decisions that although the product price type of formula was retained in use, the trend and level of price which it had produced, or was expected to produce, had been

checked against the "reliable guide" of prices paid by unregulated plant operators.

It is noted that in most of the decisions since 1949 relating to the Class III price formula in Order No. 2 the Secretary, in determining the appropriate level of the Class III price, compared it specifically with the U.S. average price. The U.S. average milk price series, therefore, has been used in the past either directly or indirectly in determining the level of the reserve milk prices for more than 85 percent of the producer milk involved in this hearing.

In the present hearing, the evidence presented, taken in its entirety, represented a broad, almost nationwide, viewpoint concerning the implications on the national markets for dairy products when prices in the Northeastern markets for milk in manufacturing uses tend to depart from the general level and trend of prices to dairy farmers generally for milk in these uses. The milk used in manufactured products under these orders, and particularly Order No. 2, represents significant quantities. The large urban areas of the Northeast represent principal markets for manufactured dairy products such as butter and cheese produced in other parts of the nation. Thus, on the basis of the evidence presently before the Secretary, the pricing of reserve milk to producers in the Northeastern Federal order markets is no longer a matter of local economic interest only and therefore cannot be dealt with simply in local terms.

ISSUE No. 2

There is substantial competition among the 10 regulated markets of the Northeast, both in the procurement of milk supplies and in the marketing of milk products into which reserve supplies of the individual markets are manufactured.

Handlers regulated under several New England orders procure producer milk in Eastern New York State in competition with handlers regulated by the New York-New Jersey order. Located in Washington County, New York, for example, are plants regulated by the New York-New Jersey, Greater Boston, and Connecticut milk orders which draw milk from substantially a common supply area. In the past a Southeastern New England pool handler also has procured milk in this county. New York-New Jersey handlers procure milk in Vermont, the major supply area for the Greater Boston market.

In Pennsylvania there are five counties in which there are plants regulated by the Philadelphia and New York-New Jersey orders. Handlers regulated by the Philadelphia, Wilmington, and New York-New Jersey orders are in direct procurement competition with Upper Chesapeake Bay handlers. Three New York-New Jersey pool plants which receive milk from producers are located in Maryland and Delaware and 74 such plants are located in Pennsylvania. Six Philadelphia producer milk (regulated) plants are located in Maryland and Delaware. The eastern shore of Maryland, all of which is included in the Upper

Chesapeake Bay marketing area, is part of the regular supply area for the Philadelphia and New York-New Jersey markets as well as for the Upper Chesapeake Bay market.

This results in considerable overlapping of procurement (milkshed) areas for the 10 Northeastern markets.

Handlers regulated by the various Northeastern market orders compete in the distribution of most products manufactured from the markets' reserve supplies of producer milk, although the principal competition is in the so-called "soft products" (principally cream, condensed milk, ice cream, ice cream mix and cottage cheese). The markets for these products are highly competitive, with a considerable degree of overlapping of sales territories among markets.

Products manufactured from New York-New Jersey pool milk in the plants of a New York-New Jersey handler are distributed from New York City to Florida, with added distribution therefrom throughout the major cities of the Northeast. These include cottage cheese, cream cheese, and yogurt.

A manufacturer of American-type cheese operates several plants in New York State at which New York-New Jersey pool milk is utilized. The same manufacturer also operates a plant in Vermont which utilizes Boston order pool milk. Cheese manufactured at all these plants is marketed through a central distribution facility at Philadelphia under common brand both in conjunction with, and in competition with, other cheese manufactured from reserve milk priced under Northeastern orders and cheese manufactured in Midwestern states.

A principal Boston handler distributes manufactured milk products from its Boston-regulated plant in New York State in direct competition with products manufactured from New York-New Jersey pool milk. Several New England handlers regularly purchase butterfat and milk solids from New York-New Jersey pool plants for Class II milk uses. Also, New England handlers sometimes depend on manufacturing facilities in New York State as an outlet for seasonal surpluses of milk.

A manufacturing milk plant at Laurel, Maryland, regulated by the Washington, D.C., order, distributes manufactured products in Metropolitan New York and New Jersey in direct competition with New York-New Jersey handlers. The products distributed from this plant are mainly for use in the ice cream trade.

A New York-New Jersey regulated handler operates an unregulated ice cream plant at Woburn, Massachusetts, in the Greater Boston marketing area. The principal sources of butterfat for this plant are New York-New Jersey order pool plants.

New York State plants are regular sources of fluid cream (from Class III milk) for both the Philadelphia and Boston markets. Philadelphia and New York-New Jersey handlers compete for sales in a common market for manufactured milk products in southeastern Pennsylvania and in southern New Jersey.

The record does not indicate that local or state regulations affecting the quality of the raw milk used in manufactured milk products in the markets of the Northeast, operate to reduce intermarket competition to any substantial degree. Some manufacturers compete in products which have "national" markets (customarily supplied to a major extent with products made from ungraded milk). Insofar as health requirements are concerned milk from other fluid markets or processed milk products, such as butter, condensed milk, or nonfat dry milk purchased in the open market, can be substituted in manufacturing milk operations, such as ice cream processing.

Several regulated plants manufacturing reserve supplies of producer milk in these fluid markets are located in close proximity to the large population centers of the Northeast; particularly is this true of plants regulated by the New England and the New York-New Jersey orders. Also, the manufacturing plant at Laurel, Maryland, near Washington, D.C., and regulated by the Washington order, is as near to New York City and northern New Jersey as are many manufacturing plants regulated by the New York-New Jersey order.

The marketing problems which result when reserve milk prices in these fluid markets are out of line were clearly illustrated. In late 1960 and early 1961 an unusually strong "national" market for cheddar cheese increased the U.S. average prices, and consequently Class II prices in New England in relation to reserve milk prices in other Northeastern markets which employ formulas based on the market prices for butter or cream and nonfat dry milk in pricing reserve milk.

During this period New York-New Jersey handlers were successful in obtaining outlets in New England for Class III products, particularly fluid cream and ice cream, which had previously been supplied by New England handlers. During this period also, competition from New York-New Jersey handlers resulted in substantial price reductions on such products in New England markets and placed New England regulated handlers, accounting for milk at the Class II price under their respective orders, at a serious competitive disadvantage in the marketing of manufactured dairy products in their local markets.

At other times, particularly in the months of flush production, when New England Class II prices have been seasonally low in relation to the New York-New Jersey Class III price, a reverse competitive condition exists. Also, New York manufacturers sometimes turn at such times to sources in New England for manufacturing milk. A New York manufacturer testified that in the spring months of the year, New England cooperatives are an important source of cream for his cream cheese plant in Upper New York State. Use of New England cream in New York manufacturing plants in these circumstances tends, of course, to force New York-New Jersey order producer milk into the lowest-valued butter and cheese uses, thereby reducing returns to New York-New Jersey producers.

Under these conditions the orderly marketing of reserve supplies of producer milk calls for close alignment of surplus prices in the Northeastern regulated markets. Except for representatives of the Philadelphia handler association, all interested parties who presented testimony at the hearing, supported a high degree of uniformity among reserve milk prices under the 10 Northeastern orders.

Because of the varying distances of major locations of procurement competition to the basing points in the respective marketing areas, and because of somewhat different transportation rates per mileage zone contained in the orders, an identical price for each location in each milkshed in respect of the basing point at which the price is announced may not be achieved for each of the markets. This, however, is not as significant as achieving at this time relatively close alignment of prices at the principal locations of procurement competition.

The New York-New Jersey market represents the largest market in the Northeast. Also, the New York-New Jersey market is the only market which is in direct competition for supplies with nearly all of the 9 other markets under consideration. The alignment of reserve milk prices under the five New England orders, the Philadelphia and Wilmington orders, and the Upper Chesapeake Bay and Washington orders should be fixed, therefore, in relation to Class III prices under the New York-New Jersey order.

Class III prices under the New York-New Jersey order are announced, on the basis of milk of 3.5 percent butterfat content, at plants located in the 201-210 mile zone. Class II prices for the Boston order also are announced for plants located in the 201-210 mile zone, but on 3.7 percent butterfat basis. These are the markets with the largest volumes of reserve milk for manufacture. The respective Class III and Class II prices under these orders should be similar at such location when adjusted to a common butterfat test.

The Class II prices under the four other New England orders (Connecticut, Southeastern New England, Springfield, and Worcester) presently are announced f.o.b. either city plants or other basing points in the respective marketing areas. The announced Class II price under each of these orders is the Boston Class II price plus 5.8 cents. Practically all the manufacturing facilities associated with these four orders are located within their marketing areas. The current alignment of prices among these orders, and between these orders and the Boston order, have not resulted in disruptive marketing conditions and no reason was presented to alter this relationship.

The transportation differential for Class II milk under the Connecticut, Southeastern New England, Springfield, and Worcester orders (specified in the orders as "zone price differentials") reduces the Class II prices under those orders 7 cents per hundredweight for plants located in the 201-210 mile zone. This compares with an 8-cent differential

for such distance in the New York-New Jersey market. A plant regulated under the Connecticut order and in the 121-130 mile zone, but also so-located that if it were subject to the New York-New Jersey order it would be in the 126-130 mile zone, would have a 1.7 cents lower Class II price under the Connecticut order than it would have Class III price if the plant were regulated by the New York-New Jersey order.

The major handler association in the Philadelphia market maintained that Class II prices under the Philadelphia order should not be aligned necessarily with Class III prices under the New York-New Jersey order and contended that local marketing conditions in Philadelphia dictate a different price structure. It was argued that Philadelphia is essentially a fluid milk market, with Class I sales amounting to 74 to 76 percent of producer receipts each year from 1949 through 1959. Because of this high Class I utilization, they contended that the seasonality of available Class II milk in the market is high, increasing the cost of manufacture under order No. 4.

The price relationship between the New York-New Jersey Federal order and the Philadelphia Federal order has varied by amounts up to 10 cents per hundredweight from year to year. The five-year average price (1956-1960) of Class II milk under the Philadelphia order, however, was less than the New York-New Jersey Class III price by only 1.5 cents per hundredweight. Over time, therefore, annual price differences between these orders have tended to balance out so that the long-term differences have been small.

There are five counties in Southeastern Pennsylvania (i.e., Chester, Berks, Cumberland, Franklin, and York), in which there are both Philadelphia and New York-New Jersey pool plants. These plants are located mainly in the 70.1-140 mile zone as set forth in the Philadelphia order. The plants in this area subject to the New York-New Jersey order are located in the 151-170 mile zone from the basing point in the New York-New Jersey marketing area.

Philadelphia price announcements are issued by the market administrator f.o.b. plants in the marketing area for 3.7 percent milk. The applicable location differential to handlers on Class II milk in the 70.1-140 mile zone is a minus 6 cents. The comparable price under the New York-New Jersey order at plants in the 151-170 mile zone is the Class III price in the 201-210 mile zone, plus two cents. To continue the close price alignment between these markets the price for Class II milk under order No. 4, as announced f.o.b. plants in the marketing area, for 3.7 percent milk should be the order No. 2 Class III price as announced for plants in the 201-210 mile zone for 3.5 percent milk (adjusted to a 3.7 percent basis), plus eight cents.

The announced Class II prices for the adjacent Wilmington market are identical with the announced Class II prices under the Philadelphia order. Appropriate changes made herein would maintain that same relationship on the find-

ings previously made in this decision as to the need for aligning all the markets of the Northeast.

There are three order No. 2 plants located in the marketing area of the Upper Chesapeake Bay order. These plants are located in the 151-170 mile zone from the basing point in the New York-New Jersey marketing area. This mileage zone has a transportation differential on Class III milk of plus two cents over the 201-210 mile zone price. It is appropriate, therefore, that the Class II price under the Upper Chesapeake Bay order be set at two cents over the Class III price for 3.5 percent milk in the 201-210 mile zone under the New York-New Jersey order.

The Class II price formula effective in the Upper Chesapeake Bay order (also effective in the Washington, D.C., order) yielded Class II prices which, on the annual average in 1960, were two cents per hundredweight more than the New York-New Jersey Class III prices in the 201-210 mile zone.

Thus, it is reasonable that the Class II price level for the Upper Chesapeake Bay market continue in about the same relationship to New York-New Jersey Class III prices as in the past. In view of the direct and close competition in procurement between the Upper Chesapeake Bay market and the Washington, D.C., market, and the absence of indication in the record that the past price relationship between such adjacent markets has caused procurement or marketing difficulties, the same price formula should be adopted also for the Washington, D.C., market.

While a close alignment of prices among the 10 markets is appropriate, it is recognized that minor price differences among the markets will continue because of the varying location adjustment, or transportation, rates contained in the respective orders (the Upper Chesapeake Bay and Washington, D.C., orders do not provide for any plant location adjustment for Class II milk). Alignment within the limits provided by the evidence represents a substantial narrowing of past price differences among the markets, however, and will tend to promote the orderly marketing of milk. It would not be reasonable to delay the action proposed on the basis that minor differences resulting from variations in location adjustments, which were not under consideration at the hearing, would disrupt orderly marketing.

In the interest of maintaining the closest possible alignment of reserve milk prices in the 10 Northeastern markets, the attached amendments have deleted all references to "cream prices" in the computation of Class II prices under the five New England orders and the Philadelphia, Wilmington, Upper Chesapeake Bay and Washington orders.

The U.S. average price is reported on the basis of the average butterfat content of the milk covered. This butterfat test varies from month to month. Since the class prices under Federal orders are announced on a specified percentage of butterfat content, the U.S. average price should be adjusted to that butterfat test

on which the price is announced in the particular market.

Prices under order No. 2 are based upon milk containing 3.5 percent butterfat content. The method to be used in converting the U.S. average price to a 3.5 percent basis should be as follows: Subtract for each one-tenth of one percent of average butterfat content above 3.5 percent, or add for each one-tenth of one percent of average butterfat content below 3.5 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the Department of Agriculture.

A similar method should be used in converting the U.S. average price as applied to the nine other Federal orders involved. In those markets, which base their announced prices on 3.7 percent butterfat, "3.7" should be used in the above method of computation in lieu of "3.5".

The butterfat differentials used in adjusting the prices of reserve milk vary considerably among the 10 markets. For example, the Boston, Springfield and Worcester Federal orders provided for an annual average butterfat differential of 7.5 cents per point $\frac{1}{10}$ percent of butterfat) in 1958. The New York-New Jersey butterfat differential was 7.1 cents, and the Philadelphia and Wilmington butterfat differentials averaged 7.0 cents, per point for the same year. Between such three New England orders and the Philadelphia and Wilmington orders there was a difference of 0.5 cent per point. In 1959, the difference between the high and the low annual average butterfat differentials in such markets was 0.6 cent, and in 1960 it was 0.7 cent.

The monthly variations among the orders have been greater than the yearly average differences. For February 1961, the month in which the largest variation occurred, the Connecticut butterfat differential was 8.0 cents per point while the butterfat differential under each of the Philadelphia, Upper Chesapeake Bay, Washington, D.C., and Wilmington orders amounted to 6.8 cents, a difference of 1.2 cents per point.

Establishing uniformity in butterfat differentials on milk for manufacturing uses in Federal order markets in the Northeast also will assist in minimizing differences in prices to handlers under the different orders.

It will assist also in future comparisons of class prices among the markets, reducing confusion as to the proper basis for such comparisons. Today, price comparisons may vary depending upon which butterfat differentials are used in adjusting individual market prices to a common butterfat test. Prices compared may vary by as much as one or two cents per hundredweight depending upon the particular butterfat differentials used. An example of this is that for May and June 1960, conversion of the Boston Class II prices from 3.7 per-

cent to 3.5 percent by use of the Boston butterfat differential results in Boston Class II prices lower than the New York-New Jersey Class III prices (May—Boston \$2.822, New York-New Jersey \$2.83; June—Boston \$2.814, New York-New Jersey \$2.82). If, however, New York-New Jersey Class III prices are converted from a 3.5 percent basis to 3.7 percent, using the New York-New Jersey butterfat differential, the Boston Class II prices exceed the New York-New Jersey Class III prices for such months (May—Boston \$2.97, New York-New Jersey \$2.966; June—Boston \$2.96, New York-New Jersey \$2.954). Although the differences in the prices arrived at by the two methods are relatively small in this example, such comparisons were used in the testimony to reach divergent conclusions.

For the purpose, therefore, of obtaining the best possible alignment of reserve milk prices, it is concluded that the Class III butterfat differential under the New York-New Jersey order and the Class II butterfat differentials under the Philadelphia, Pennsylvania, Upper Chesapeake Bay, Wilmington, Delaware, and Washington, D.C., orders should be computed in the same manner as the producer butterfat differential contained in the Boston, Southeastern New England, Springfield, and Worcester orders. Such differential is within the range of differentials currently in effect in the 10 markets. This is also the same butterfat differential used to convert the U.S. average price to a 3.5 percent butterfat basis under the respective orders.

The time period used in computing the average of the daily prices for Grade A (92-score) butter at wholesale, under the New York-New Jersey, Philadelphia, Wilmington, Upper Chesapeake Bay, and Washington orders has been changed from a monthly basis to "the period between the 16th day of the preceding month to the 15th day, inclusive, of the current month". This conforming change is desirable to make the butterfat differentials for reserve milk under all 10 of the orders the same.

A further conforming change is necessary to insure that the butterfat differential provision of the Connecticut order will be aligned with those in the other markets. The Connecticut order, like the four other New England orders, does not contain butterfat differentials for the separate classes of milk as such but provides for a single (producer) butterfat differential which, in effect, is applicable to each of the classes. Unlike the other New England markets, however, the present Connecticut producer butterfat differential is rounded to the nearest cent rather than to the nearest tenth of a cent. In order to make all butterfat differentials affecting the value of reserve milk identical, the Connecticut butterfat differential would be rounded to the nearest one-tenth of a cent rather than to the nearest full cent. This is appropriate since the difference in such "rounding" methods could result in a possible maximum difference, up or down, of 0.5 of a cent per point of butterfat (5 cents per pound of butterfat) changing the relative butterfat and skim milk values in producer milk by as much

as 2.5 cents per hundredweight of the skim milk portion of the producer milk when the butterfat content varies 5 points from the standard. Such change thus will place the Connecticut market on equal terms with the other markets in the month-to-month disposition of reserve milk. Over time there should be little difference in the average butterfat differential value resulting from the two methods of rounding.

The provisions of the Springfield and Worcester, Massachusetts, orders regarding Class II prices and butterfat differentials do not contain specific formula language, but instead, refer to the appropriate provisions of the Boston order since the formula language would be identical with that of the Boston market. It is not necessary, therefore, to amend these two orders as a result of this hearing. The new formula, however, carries to these orders on the basis of their present relationship to the Boston order.

ISSUE No. 3

It is concluded that the proposed separate pricing of "excess" surplus milk utilized in manufactured dairy products by or for the account of an "incorporated marketing agency" of producer cooperative associations, and sold to the Commodity Credit Corporation under the national price support program, should not be adopted.

Three of the major producer groups operating primarily in the New York-New Jersey market submitted a proposal for the separate pricing of milk marketed under the following conditions:

(1) The handler has refused to receive milk because he is unwilling to account for it at the minimum prices under the order;

(2) The milk has been marketed by or for the account of an incorporated marketing agency formed, controlled and operated by cooperatives, either qualified for cooperative payments under the New York-New Jersey order or qualified for marketing services under one of the other Northeastern orders (at the hearing, this was modified to include cooperatives qualified under the orders for voting purposes); and

(3) The milk is marketed for such agency under the Government price support program for dairy products.

Such milk was described by proponents as "excess" surplus milk and is so termed for the discussion herein.

The classification price for the producer milk, so marketed, would be computed at the net price received by the agency after deduction of its expenses.

The general objectives of such proposals, as stated by proponents, are: (1) to clear the market of all "excess" surplus by utilizing the product outlets of the national dairy price support program, (2) to obtain higher returns for milk in other Class III uses, and (3) to improve the bargaining position of the cooperative associations.

Although the general objectives apply to all the proposals, the method or approach differed. Proponents of proposals 3 and 5 in the notice would provide only for enabling language in the orders to establish and operate such a marketing agency. Proposal 3 would apply to all

the Northeastern Federal milk orders and complementary New York and New Jersey State orders. Proposal 5 would apply to all the Northeastern Federal milk orders, companion New York and New Jersey State orders, and other Northeastern state milk orders as well. Proposal 14 would limit the agency's operation to the New York-New Jersey market and it also specifies more detailed operating conditions which such an agency would be required to meet.

In order to achieve the general objectives outlined, an additional use-category without a specific price or price formula is proposed for the disposition of producer milk under the above-described conditions. The marketing agency would market the excess surplus milk and would compute a "net" price after processing, and handling costs are deducted. Such net price would be used each month in computing the pool obligation on such milk. By being marketed in this manner it was contended that the milk would be insulated from competition with milk marketed in normal commercial channels.

The marketing agency proposals were prompted by certain other proposals which would change the basis and level of pricing surplus milk in the New York-New Jersey and other Northeastern Federal order markets. It was contended that if Class III milk prices under Order No. 2 are to be increased, there is need to provide additional mechanics for the disposal of both "tail-end" quantities of surplus milk which handlers do not accept and of such increased quantities of milk as might be induced by a higher Class III price level which might not be wanted by proprietary handlers. It was the position of proponents of proposals 3 and 5 that the expense associated with a "guaranteed" alternative market for excess surplus milk should be shared by producers of all regulated markets in the Northeast region.

Proponents generally envisage a marketing agency established and incorporated by those cooperative associations which meet any of the following conditions: are qualified for "cooperative payments" under Order No. 2, are qualified to receive deductions from monies due producer members as provided by the marketing services provisions contained in the other Federal milk orders of the Northeast where such provisions are effective, or meet the requirements of the "Capper-Volstead" Act.

As described by proponents, the organizational structure of the marketing agency would be determined entirely by the participating cooperatives. Each participating cooperative would be represented on the governing board of the agency as a matter of right. Voting representation of the participating cooperatives on the board would be left to the by-laws adopted by the agency. It was the expressed intent, particularly as to proposals 3 and 5, to keep the jurisdictional powers of the Secretary at a minimum in the formation and operations of the agency.

The cooperative marketing agency would establish an office apart from those of participating cooperatives. The agency, in disposing of excess-surplus

milk, presumably would guarantee an "alternative" market for producers. However, at least one proponent testified that a cooperative marketing agency of this kind should not be required to accept all the milk referred to it.

Handlers who are unwilling to account for a quantity of Class III milk at the minimum (formula) Class III price established by the order could utilize the agency to market such milk. In practice, a handler would notify the cooperative marketing agency in advance that certain milk is not wanted. The cooperative marketing agency would negotiate with the handler to process the milk, or would arrange for its delivery to another plant for processing. In the first instance, the cooperative marketing agency and the handler would negotiate a handling allowance to the handler for services performed in receiving, weighing and testing the milk. Certain of the proponents would limit this allowance to not more than 17 cents per hundredweight of milk. To the extent that this amount would be insufficient to cover the actual cost of these services at a particular plant, such plant would make a contribution to the cost of the "rescue" operation performed by the cooperative marketing agency. Another proponent would limit the handling allowance to the actual costs involved plus 6 percent, or 17 cents per hundredweight, whichever is less. Any plant accepting milk from the cooperative marketing agency would contract to take it for a stated period of time with the guarantee that the products made from such milk would be acceptable for purchase by the government under the national price support program. Full processing and transport costs would be allowed in addition to the negotiated allowance for receiving and testing.

Certain basic operating conditions stated in connection with proposal 14 in the hearing notice were (1) the cooperative marketing agency must market all the milk offered to it if the handler certifies to the market administrator that his handling of the milk involved would be unprofitable at prevailing order prices, and (2) the market administrator could not approve such certification if the handler increased his total volume by adding producers to his payroll or by otherwise obtaining milk from producers who had delivered previously to other markets. The latter condition would require the market administrator to verify the alleged unprofitability in handling by the proprietary handler. The obligation on the cooperative marketing agency to take the milk from such handler would be dependent on such determination and verification. It is not clear from the testimony, however, whether such unprofitability has reference to the total operations of the handler, or to certain aspects of handling.

Having negotiated a handling charge, and arranged for milk to be processed at a plant, the cooperative marketing agency would notify the handler from whom the milk was taken of the "net" price at which the milk should be accounted for under the order. Unless

the cooperative marketing agency, or "clearing house", operated facilities of its own as a handler, accountability to the pool would be accomplished through the handler for whom the milk is marketed. Such net price would be the amount received by the agency less handling, transportation and overhead expense. The net price necessarily would be a preliminary figure subject to subsequent adjustment depending on the overhead expense of the cooperative marketing agency, as finally determined by the agency.

The proposals recognized the desirability of disclosure of the financial operations of the cooperative marketing agency. One proposal would vest accounting responsibility in the market administrator. The specific means for auditing agency operations were not indicated in connection with the other proposals.

Proponents contend that existing milk manufacturing facilities are sufficient in the New York-New Jersey market and in other markets of the Northeast to accommodate all quantities of milk likely to be handled by the cooperative marketing agency. Proponents do not preclude, however, the acquisition by the agency of its own processing facilities for the specified purposes. At least one proponent stated the position that the operations of the cooperative marketing agency could generate the funds therefor if such facilities were deemed necessary. The main objective of such an acquisition would be to place producers in position to compete favorably with efficient Midwestern plants processing butter and nonfat dry milk.

The principal effects of the proposals would be to (1) establish a limited use-classification for "excess" surplus milk without a corresponding fixed minimum price, or specific method for fixing minimum prices, which all handlers shall pay, (2) create a cooperative marketing agency to market the milk accounted for in such use, (3) permit handlers to avoid payment of the prevailing Class III milk price on a portion of their receipts, and (4) assess to all producers in the market the costs incurred in marketing excess surplus milk.

The concept of equalizing among producers the returns from the sale of their milk is contained in all the Federal milk marketing orders in the Northeast either by marketwide pooling or through individual-handler pools, as provided by the statute. Such equalization is dependent upon the minimum value of the milk utilized by handlers. This minimum value is determined from the specific methods for fixing the minimum class prices established by the respective orders. Classified pricing is fundamental to such equalization.

Since the proposed cooperative marketing agency would arrive at prices for milk disposed of from time to time as individual quantities of "excess" surplus milk on the basis of negotiation of the receiving and processing costs associated therewith, such prices under Order No. 2, or any of the other orders in the Northeast, normally would not be uniform among all handlers because of the varia-

tions resulting from separate negotiations. An "open-end" plan of negotiating different prices with various handlers for individual lots of milk does not provide assurance of uniform applicability to all handlers.

The preliminary nature of the net price which the proposed agency would determine could prevent or unduly delay the fixing of a specified time at which payment shall be made for milk. In large measure, the success of equalization revolves around a "producers" fund which is solvent and to which all contribute in accordance with a formula equitably determined and of uniform applicability. Failure by handlers to meet their obligations promptly would threaten the whole scheme. Even temporary defaults by some handlers could work unfairness to others, encourage wider noncompliance, and engender doubt and distrust which could dislocate delicate economic arrangements. None of the proposals under consideration contemplated full payment for the milk involved within the periods for payment provided by the several Northeast orders.

Discussion of the problems of determining appropriate Class III milk prices under Order No. 2 is contained in exhibits 14-19 of the record. These exhibits have been referred to earlier as the "Clark study", a marketing research project sponsored by the Department. This study concludes, among other things, that the price-making agency might find it feasible and desirable to control the physical handling of "excess" surplus milk by operating its own processing facilities, or by designating one or more firms within the industry to act in its behalf to dispose of milk not wanted by handlers, so that the pricing agency in setting the general price level for Class III milk under Order No. 2 would not need to be concerned with the possibility of some milk remaining unsold. We believe this suggestion was predicated on the assumption that the pricing agency would have the authority and responsibility of assuring that all the milk produced finds a market.

While such authority and responsibility are not provided, the Secretary is required, on the other hand, to fix classification prices or methods of pricing which, in meeting specific criteria, must be at a level in the public interest. The problem involved in achieving this result when delegation of such responsibility is involved was described in a final decision issued August 13, 1954, by the Assistant Secretary relating to proposed amendments to Order No. 2, official notice of which is taken. At that time the proposal was a "flexible" pricing plan, with a general objective somewhat similar to that underlying the present marketing agency proposal. The proposal at that time would have authorized the market administrator to establish, within prescribed limits, handling allowances to handlers in connection with the disposition of surplus milk. A condition of the 1954 proposal was that such allowances could be revoked by the Secretary within a specified time period. In view of this proposed "veto" it was found

that the prospect of obtaining different decisions than might be arrived at by the Secretary would be indeed remote in any situation where the proposed delegation of authority tended to preclude the Secretary from effectively discharging the responsibilities for the fixing of minimum prices to producers imposed upon him by the statute. Thus, the 1954 decision correctly observed that the price-making responsibility vested in the Secretary by the Act must not be rendered ineffective by delegation. In denial of the proposal, it was found that such an arrangement was not an acceptable method of increasing flexibility in the pricing of Class III milk. A difficulty similar in principle is involved in the present proposal.

It is concluded that none of the proposals to establish a cooperative marketing agency to market "excess" surplus milk under the conditions contemplated may be adopted.

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

Rulings of the presiding officer to which specific objections were taken in the briefs have been reviewed. Objections were raised to the Presiding Officer's ruling upon the following: (1) denial of cross-examination of a cooperative association representative as to the circumstances now present which had not been considered previously by the Secretary in prior decisions on Class III price formula proposals; and (2) the exclusion of testimony in support of revision of transportation (location) differential rates for Class II or III milk in the respective orders as not being within the scope of the notice of hearing.

In compliance with § 900.9(b) of the rules of practice, a brief was filed in which it was maintained that the Presiding Officer was in error in his ruling on the admission of testimony as described in (1) above. The findings and conclusions contained herein are based necessarily upon the evidence adduced at this hearing. Official notice was taken of the findings and conclusions in previous decisions (as cited in the hearing record) by the Secretary, however, and the content thereof taken into account in relation to the other evidence adduced at this hearing.

The motion on the second objection cited above was supported by an offer of proof under § 900.8(d)(6) of the rules of practice (7 CFR Part 900). In compliance with § 900.9(b) of the rules of practice, a brief was filed by the interested party which requested review of the ruling made by the Presiding Officer to exclude testimony on a proposal contained in the Hearing Notice which re-

ferred to coordination of transportation, or plant location, differentials in all Northeastern Federal orders.

Specifically, this proposal would establish a new method of rate determination to result in revised zone rate schedules for each order currently containing such a schedule and providing a schedule where not so provided by the present order. In ruling on the admission of testimony on such proposal, the Presiding Officer stated his view that the notice would permit consideration of the coordination of transportation rates now in effect in the respective orders in relation to any changes made in the pricing formulas under review, but that the notice did not permit consideration of new bases for the determination of rates. The Presiding Officer granted the motion of those interested parties who complained that the notice was inadequate for the receipt of evidence on such matter. As further discussed in this decision, the relationship of reserve milk prices to be established by the amendments proposed herein takes into account price adjustments based on location.

A review of the supporting statements offered and rulings of the Presiding Officer on these motions has been made. Such rulings are hereby affirmed.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

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

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

Recommended marketing agreement and order amending the order. The following orders amending the orders regulating the handling of milk in the

Greater Boston, Massachusetts; New York-New Jersey; Philadelphia, Pennsylvania; Southeastern New England; Springfield, Massachusetts; Upper Chesapeake Bay; Washington, D.C.; Worcester, Massachusetts; Wilmington, Delaware, and Connecticut marketing areas, respectively, are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the respective orders, as hereby proposed to be amended:

AMENDMENTS TO GREATER BOSTON ORDER PROVISIONS

1. Delete § 1001.41 and substitute therefor the following:

§ 1001.41 Class II price.

The Class II price per hundredweight at plants located in zone 21 shall be determined for each month pursuant to this section.

(a) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the United States Department of Agriculture for the month, by subtracting for each one-tenth of one percent of average butterfat content above 3.7 percent, or adding for each one-tenth of one percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture.

(b) Adjust the result obtained in paragraph (a) of this section by the amount shown below for the applicable month:

Month:	Amount (cents)	Month:	Amount (cents)
Jan.....	+08	July.....	+08
Feb.....	+07	Aug.....	+15
Mar.....	00	Sept.....	+11
Apr.....	-04	Oct.....	+11
May.....	-07	Nov.....	+11
June.....	-06	Dec.....	+11

2. Delete § 1001.44 and renumber §§ 1001.45 and 1001.46 as §§ 1001.44 and 1001.45.

3. Delete present § 1001.46(b) and substitute therefor the following as new § 1001.45(b):

(b) He shall announce the Class II price on or before the 5th day after the end of each month.

4. Replace the semicolon in § 1001.50 (c) with a period, delete from such paragraph the word "and", and delete § 1001.50(d).

5. Delete § 1001.63 and substitute therefor the following:

§ 1001.63 Butterfat differential.

Each handler, in making payments to each producer for milk received from him, shall add for each one-tenth of one percent of average butterfat content

above 3.7 percent, or deduct for each one-tenth of one percent of average butterfat below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 1.25 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture and dividing the result by 10.

AMENDMENTS TO NEW YORK-NEW JERSEY ORDER PROVISIONS

1. Amend the opening paragraph of § 1002.40 by deleting the cross-reference "1002.44" wherever it appears and substitute therefor "1002.43."

2. Amend § 1002.40(b) by deleting "1002.46" wherever it appears and substitute therefor "1002.45."

3. Delete § 1002.40(e) and substitute therefor the following:

(e) For Class III milk, the price shall be the net amount determined pursuant to this paragraph:

(1) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the United States Department of Agriculture for the month, by subtracting for each one-tenth of one percent of average butterfat content above 3.5 percent, or adding for each one-tenth of one percent of average butterfat content below 3.5 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month:	Amount (cents)	Month:	Amount (cents)
Jan.....	+08	July.....	+08
Feb.....	+07	Aug.....	+15
Mar.....	00	Sept.....	+11
Apr.....	-04	Oct.....	+11
May.....	-07	Nov.....	+11
June.....	-06	Dec.....	+11

4. Amend § 1002.41 by deleting the words "and Class III" immediately following the words "Class II", and adding a new sentence at the end of the section to read as follows: "The minimum price for Class III milk shall be plus or minus, for each one-tenth of one percent of butterfat therein above or below 3.5 percent, an amount computed as follows: Multiply by 0.125 and round to the nearest one-tenth cent the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) reported during the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the

United States Department of Agriculture for Grade A (92-score) bulk creamery butter in the New York City market."

5. Amend § 1002.42 by deleting "1002.44" in the last sentence immediately preceding the table and substitute therefor "1002.43".

6. Delete § 1002.43 in its entirety and renumber §§ 1002.44, 1002.45 and 1002.46 as §§ 1002.43, 1002.44 and 1002.45, respectively.

7. Amend present § 1002.45 by deleting "1002.46" immediately following the words "§§ 1002.40 through" and substituting therefor "1002.45".

8. Amend present § 1002.46(b) by deleting subparagraphs (3), (7), and (8); by renumbering subparagraphs (4), (5), (6), (9), and (10) as (3), (4), (5), (6), and (7); and in present subparagraph (4) by deleting "1002.44" and substituting therefor "1002.43".

9. Amend the opening paragraph of § 1002.65 by deleting "1002.43" immediately preceding "1002.66"; by deleting paragraph (e); and by renumbering paragraphs (f), (g) and (h) as (e), (f), and (g).

10. Amend § 1002.82 by deleting paragraph (b) and renumbering paragraph (c) as (b).

11. Amend § 1002.83(b) by deleting "1002.44" wherever it appears and substituting therefor "1002.43"; and in subparagraph (3) by deleting the reference to "§ 1002.46(b)(9)" and substituting therefor "§ 1002.45(b)(6)".

12. Amend § 1002.84(b)(3) by deleting "1002.44" and substituting therefor "1002.43".

AMENDMENTS TO PHILADELPHIA ORDER PROVISIONS

1. Delete § 1004.50(b) and substitute therefor the following:

(b) The price per hundredweight of Class II milk shall be determined for each month as follows:

(1) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the United States Department of Agriculture for the month, by subtracting for each one-tenth of one percent of average butterfat content above 3.7 percent, or adding for each one-tenth of one percent of average butterfat content below 3.7 percent an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture; and

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month:	Amount (cents)	Month:	Amount (cents)
Jan.....	+16	July.....	+16
Feb.....	+15	Aug.....	+23
Mar.....	+06	Sept.....	+19
Apr.....	+04	Oct.....	+19
May.....	+01	Nov.....	+19
June.....	+02	Dec.....	+19

2. Delete § 1004.51 and substitute therefor the following:

§ 1004.51 Butterfat differentials to handlers.

For milk containing more or less than 3.7 percent butterfat, the class prices for the month calculated pursuant to § 1004.50 shall be increased or decreased, respectively, for each one-tenth of one percent variation in butterfat content by the appropriate rate, rounded in each case to the nearest one-tenth cent determined as follows:

(a) *Class I milk.* Divide by 37 an amount calculated as follows: Add all market quotations (using the midpoint of any weekly range as one quotation) of prices per 40-quart can of fresh sweet cream of bottling quality of 40 percent butterfat content, not including prices for cream carrying special municipal approvals, reported at Philadelphia for each week ending within the month by the United States Department of Agriculture, divide by the number of quotations, subtract \$2.00, divide by 9.19: *Provided*, That such butterfat value shall not be less than 3.7 times 120 percent of the average of the daily wholesale selling prices for Grade A (92-score) butter at New York as reported by the United States Department of Agriculture for the month for which payment is to be made, less 18 cents.

(b) *Class II milk.* Multiply by 0.125 the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture for Grade A (92-score) butter in the New York City market.

3. Amend § 1004.81 by deleting all the words following the word "respectively" and substituting therefor the following "by the butterfat value computed pursuant to § 1004.51(a) and rounded to the nearest full cent."

AMENDMENTS TO SOUTHEASTERN NEW ENGLAND ORDER PROVISIONS

1. Amend § 1014.40(b) by deleting subparagraphs (1), (2), (3) and that part of (4) immediately preceding subdivision (i); and renumbering subdivisions (i) and (ii) as subparagraphs (1) and (2).

2. Amend subdivision (ii) of § 1014.40 (b)(4) (renumbered to be subparagraph (2)) by deleting the words "subdivision (i) of this subparagraph" and substitute therefor "subparagraph (1) of this paragraph", and by deleting the monthly seasonal adjustments and substituting therefor the following:

Month:	Amount	Month:	Amount
Jan ----	+\$0.138	July ----	+\$0.138
Feb ----	+ .128	Aug ----	+ .208
Mar ----	+ .058	Sept ----	+ .168
Apr ----	+ .018	Oct ----	+ .168
May ----	- .012	Nov ----	+ .168
June ---	- .002	Dec ----	+ .168

3. Amend § 1014.61 by deleting the language which begins "as follows: Subtract 52.5 cents" through and including the words "the butterfat differential shall be determined".

AMENDMENTS TO UPPER CHESAPEAKE BAY (MARYLAND) ORDER PROVISIONS

1. Delete § 1016.50(b) and substitute therefor the following:

(b) *Class II price.* The price for Class II milk shall be determined for each month as follows:

(1) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the United States Department of Agriculture for the month, by subtracting for each one-tenth of one percent of average butterfat content above 3.5 percent or adding for each one-tenth of one percent of average butterfat content below 3.5 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture; and

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month:	Amount	Month:	Amount
Jan ----	+\$0.10	July ----	+\$0.10
Feb ----	+ .09	Aug ----	+ .17
Mar ----	+ .02	Sep ----	+ .13
Apr ----	- .02	Oct ----	+ .13
May ----	- .05	Nov ----	+ .13
June ----	- .04	Dec ----	+ .13

2. Delete § 1016.51(b) and substitute therefor the following:

(b) *Class II milk.* Multiply by 0.125 the simple average of the daily wholesale selling prices per pound (using the midpoint of any range as one price) reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture for Grade A (92-score) butter in the New York City market.

AMENDMENTS TO WASHINGTON, D.C., ORDER PROVISIONS

1. Delete § 1003.50(b) and substitute therefor the following:

(b) *Class II price.* The price for Class II milk shall be determined for each month as follows:

(1) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the United States Department of Agriculture for the month, by subtracting for each one-tenth of one percent of average butterfat content above 3.5 percent, or adding for each one-tenth of one percent of average butterfat content below 3.5 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of

PROPOSED RULE MAKING

the current month by the United States Department of Agriculture; and

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month:	Amount	Month:	Amount
Jan -----	+\$0.10	July -----	+\$0.10
Feb -----	+.09	Aug -----	+.17
Mar -----	+.02	Sept -----	+.13
Apr -----	-.02	Oct -----	+.13
May -----	-.05	Nov -----	+.13
June -----	-.04	Dec -----	+.13

2. Delete § 1003.51(b) and substitute therefor the following:

(b) *Class II milk.* Multiply by 0.125 the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) reported for the period between the 16th day of the preceding month and the 15th day, inclusive, of the current month by the United States Department of Agriculture for Grade A (92-score) butter in the New York City market.

AMENDMENTS TO WILMINGTON ORDER
PROVISIONS

1. Delete § 1010.50(b) in its entirety and substitute therefor the following:

(b) *Class II milk.* The Class II price per hundredweight shall be the Class II price determined each month pursuant to § 1004.50(b) of the Federal order regulating the handling of milk in the Philadelphia, Pennsylvania, marketing area.

2. Delete § 1010.51(b) in its entirety and substitute therefor the following:

(b) *Class II milk.* The amount per hundredweight, determined for each month pursuant to § 1004.51(b) of the

order regulating the handling of milk in the Philadelphia, Pennsylvania, marketing area.

AMENDMENTS TO CONNECTICUT ORDER
PROVISIONS

1. Amend § 1015.40 by deleting paragraph (b) and renumbering paragraph (c) as (b).

2. Amend present § 1015.40(c) preceding subparagraph (1) to read as follows:

The Class II price per hundredweight shall be computed for each month as follows:

3. Amend present § 1015.40(c) (2) by deleting the monthly seasonal adjustments and substituting therefor the following:

Month:	Amount	Month:	Amount
Jan ----	+\$0.138	July ----	+\$0.138
Feb ----	+.128	Aug ----	+.208
Mar ----	+.058	Sept ----	+.168
Apr ----	+.018	Oct ----	+.168
May ----	-.012	Nov ----	+.168
June ---	-.002	Dec ----	+.168

4. Amend § 1015.61 by deleting the language which begins as follows: "Subtract 52.5 cents"-----through and including the words "the butterfat differential shall be determined" and by deleting the last two words in the section, "nearest cent" and substituting therefor the following "nearest one-tenth cent".

Signed at Washington, D.C., on January 22, 1962.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 62-901; Filed, Jan. 25, 1962;
8:49 a.m.]

