

section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

No amendatory action is taken in this decision for two other markets (Memphis, Tennessee, and Nashville, Tennessee) that were involved in this proceeding and listed in the original hearing notice. These orders were terminated effective July 31, 1993. This proceeding is hereby terminated with respect to those two markets. Thus, of the 40 orders originally involved in this proceeding, the new pricing amendments are adopted herein for only 38 orders.

At the time of publication of this decision in the **Federal Register**, a proposed termination is being considered for the Paducah, Kentucky, milk order. If the proposed termination is approved, then a referendum on the amendments contained in this decision will not be necessary and will not be conducted. However, if the proposed termination is not approved for the Paducah, Kentucky, order then proper notice will be given in the **Federal Register** and a referendum will be conducted to determine approval of the amendments contained in this decision.

The amendments adopted in this final decision are tailored to conform with the amendments adopted on the basis of the national hearing adopting a new Class II price.

Prior documents in this proceeding: Notice of Hearing: Issued May 12, 1992; published May 15, 1992 (57 FR 20790).

Recommended Decision: Issued August 3, 1994; published August 6, 1994 (59 FR 40418).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the New England and other specified marketing areas. The hearing was held pursuant to the

provisions of the Act and the applicable rules of practice (7 CFR part 900), in Alexandria, Virginia, on June 15–19, 1992, pursuant to notice issued May 12, 1992 (57 FR 20790).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 3, 1994, issued the recommended decision containing notice of the opportunity to file written exceptions thereto.

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

1. Four paragraphs are added after paragraph 74;
2. One paragraph is added after paragraph 76;
3. Three paragraphs are added after paragraph 88;
4. One paragraph is added after paragraph 92;
5. Twelve paragraphs and one table are added after paragraph 93;
6. Paragraph 95 is revised;
7. Five paragraphs are added after paragraph 95;
8. In paragraph 96, subparagraph 3(a) is revised;
9. Paragraphs 97–98 are revised, the table after paragraph 98 is removed, and seven paragraphs are added; and
10. One paragraph is added after paragraph 99.

The material issue on the record of the hearing relates to: *Replacement of the Minnesota-Wisconsin price series used to establish minimum prices under the Federal orders.*

Findings and Conclusions

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

Background Statement

This proceeding was initiated in response to concerns expressed regarding the reliability of the Minnesota-Wisconsin price series (M–W price) as an accurate indicator of the average price of milk used in manufactured products because of a continuing decline in manufacturing grade (Grade B) milk production and the number of plants that compete for the Grade B milk supply. Prior to the announcement of this hearing, a study of possible alternative pricing mechanisms was undertaken by the Department and was released in November 1991. A study was also mandated by Congress in the 1990 Farm Bill, which further required that a public hearing be held on the issue and

that the statistical information developed in the study be made available to the public.

A Notice of Hearing issued on May 15, 1992, listed ten proposals to be considered during the M–W price replacement hearing. The proposals fell into four main categories: (1) Competitive pay prices, (2) product price formulas, (3) cost-of-production formulas, and (4) the price support level. Several of the competitive pay prices were also proposed in conjunction with product price formulas for price-updating purposes. The hearing was specifically limited to a replacement for the M–W price. The hearing notice also specified that any proposals that would change the price level would have to be justified under the supply and demand pricing standards of the Act (7 U.S.C. 608c(18)).

Replacement for the Minnesota-Wisconsin Price Series

All Federal milk orders should be amended to provide for a new price series that will establish minimum prices under Federal milk orders utilizing the base month M–W competitive pay price updated with a butter/powder/cheese product price formula.

Adoption of the updated base month M–W price will result in a basic formula price that adequately reflects the value of milk used in manufactured products and will allow for the continued use of an unregulated, competitive market price. Hence, supply and demand conditions will continue to be directly reflected in the basic formula price that serves as a basis for minimum pricing of regulated milk.

Since the M–W price was first adopted in 1961 in the Chicago Regional marketing area, it has been used as a basis for setting minimum prices paid by regulated handlers. The M–W price is the mover of all Class I and Class II prices and is essentially the Class III price under all orders. Using the M–W price as the Class III price maintains price coordination between Grade B and Grade A milk supplies used for manufacturing purposes.

The M–W price is a competitive price that represents an estimate of the average of prices paid for Grade B milk in Minnesota and Wisconsin by plants that manufacture butter, nonfat dry milk, and cheese. These products are sold in a national market in competition with such products made from Grade A milk that is in excess of fluid milk needs. Month-to-month changes in the M–W price reflect changes in overall supply and demand conditions for milk and its products nationally.