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Federal Register

Friday
April 2, 1999

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WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI36

Prevailing Rate Systems; Environmental Differential Pay for Working at High Altitudes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to establish an 8 percent environmental differential pay (EDP) category for Federal Wage System (FWS) employees who work at land-based worksites located higher than 3900 meters (12,795 feet) in altitude, provided such employees are required to commute to their worksites on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. OPM is creating this new EDP category so that Federal agencies may provide additional compensation to FWS employees who are exposed to unusual health risks caused by these working conditions.

DATES: *Effective Date:* This regulation is effective on April 2, 1999. *Applicability Date:* This regulation applies on the first day of the first applicable pay period beginning on or after April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins at (202) 606–2848, or send an email message to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On October 13, 1998, the Office of Personnel Management (OPM) published a proposed rule (63 FR 54616) to establish an 8 percent environmental differential pay (EDP) category for Federal Wage System (FWS) employees who work at land-based worksites located higher than 3900 meters (12,795 feet), provided such employees are required to commute to their worksites on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. This proposal was similar to a proposed regulation issued on June 30, 1998, to establish a hazard pay differential for General Schedule employees.

The Smithsonian Institution requested that we establish an EDP category for FWS employees who must work at the Smithsonian Astrophysical Observatory (SAO) near the 4206 meter (13,800 foot) summit of Mauna Kea, an extinct volcano on the Island of Hawaii. The Smithsonian Institution stated that suitable employee housing is available only near sea level and that SAO employees must therefore commute back and forth from their homes to the SAO worksite each workday. The Smithsonian Institution submitted research evidence that indicates work at high altitudes may have negative physiological effects such as impaired judgment, increased heart rates, and nausea, especially if employees have not had time to acclimate to lower atmospheric pressures and oxygen levels that exist at high altitudes. In addition, employees are exposed to the possibility of experiencing severe health problems such as high altitude pulmonary edema, high altitude cerebral edema, and acute mountain sickness.

Under 5 U.S.C. 5343(c)(4), OPM is responsible for establishing EDP categories that Federal agencies may use to provide additional compensation to FWS employees whose duties involve unusually severe working conditions or unusually severe hazards. This final regulation will authorize a new EDP category for FWS employees who must work at land-based worksites higher than 3900 meters (12,795 feet), provided such employees are required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude could result in acclimation problems. The establishment of this new EDP category will not relieve an agency of its responsibility to take whatever measures are feasible to minimize the harmful effects of commuting to work at high altitudes.

The proposed regulation for the establishment of a new EDP category for FWS employees provided a 30-day period for public comment, during which we received one comment from a labor organization. The labor organization recognized and agreed that a need exists for the establishment of a new EDP category for FWS employees, but recommended that we consider establishing a 25 percent differential instead of the proposed 8 percent differential. The proposed differential was throughly reviewed by the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters that affect the pay of FWS employees. After careful consideration, the Committee recommended by consensus that the differential be set at 8 percent, an amount in line with other EDP categories and also in line with prevailing non-Federal practices, as reported by the Smithsonian Institution. Based on FPRAC's recommendation, we are establishing the new EDP category with an 8 percent differential.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. Some FWS employees of the Smithsonian Institution are currently commuting from near sea level to a work site near the 4206 meter (13,800 foot) summit of Mauna Kea on the Island of Hawaii. These employees currently meet the criteria in this final regulation for the environmental differential. In addition, the Smithsonian Institution has asked that this authority be made effective as soon as possible.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

Subpart E—Premium Pay and Differentials

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343.

2. Appendix A to subpart E of part 532 is amended by adding a new category to the schedule of environmental differentials at the end of Part II of the appendix to read as follows:

Appendix A to Subpart E of Part 532—Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of an Unusual Nature

PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS

Differential rate (percent)	Category for which payable	Effective date
8	*17. Working at high altitudes.* Performing work at a land-based work site more than 3900 meters (12,795 feet) in altitude, provided the employee is required to commute to the work site on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.	April 2, 1999.

[FR Doc. 99–8107 Filed 4–1–99; 8:45 am]

BILLING CODE 6325–01–U

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its organization and functions statement to reflect a change in responsibilities for performance of its human resources management functions.

EFFECTIVE DATE: April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: Effective September 28, 1998, the Board entered into a cross-servicing arrangement with APHIS Business Services (ABS), a unit of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, under which ABS provides most human resources management services to MSPB. The MSPB Financial and Administrative Management Division (FAMD) administers the cross-servicing arrangement with ABS and has direct responsibility for certain personnel functions, including policy, training, drug testing, and the Employee Assistance Program. FAMD also administers the cross-servicing arrangement with USDA's National Finance Center (NFC) for accounting and payroll services. The NFC continues to process personnel actions, which are now entered by ABS. This amendment to 5 CFR part 1200 reflects these changes by removing all references to the Human Resources Management Division and by revising the description of FAMD functions.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1200

Organization and functions (Government agencies).

Accordingly, the Board amends 5 CFR part 1200, subpart B, as follows:

PART 1200—[AMENDED]

Subpart B—Offices of the Board—[Amended]

1. The authority citation for part 1200, subpart B, continues to read as follows:

Authority: 5 U.S.C. 1204(h) and (j).

2. Section 1200.10 is amended by removing paragraph (a)(9) in its entirety, by redesignating paragraph (a)(10) as paragraph (a)(9), by removing paragraph (b)(9) in its entirety, by redesignating paragraph (b)(10) as paragraph (b)(9), and by revising paragraph (b)(8) to read as follows:

§ 1200.10 Staff Organizations and Functions.

* * * * *

(b) * * *

* * * * *

(8) *Financial and Administrative Management Division.* The Financial and Administrative Management Division administers the budget, procurement, property management, physical security, and general services functions of the Board. It develops and coordinates internal management programs and projects, including review of internal controls agencywide. It performs certain personnel functions, including policy, training, drug testing, and the Employee Assistance Program. It also administers the agency's cross-servicing arrangements with the U.S. Department of Agriculture's National Finance Center for accounting, payroll, and personnel action processing services and with the U.S. Department of Agriculture's APHIS Business Services for most human resources management services.

* * * * *

Dated: March 26, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–8091 Filed 4–1–99; 8:45 am]

BILLING CODE 7400–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–113–2]

Pine Shoot Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations to add 19 counties in Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia to the list of quarantined areas. This action was necessary to prevent the spread of

the pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on December 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Christine K. Markham, Regional Program Manager, PPQ, APHIS, 505 South Lenola Road, Suite 201, Moorestown, NJ, 08057–1549; (609) 757–5073; e-mail: Christine.Markham@usda.gov; or Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; e-mail: Coanne.E.O'Hern@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 29, 1998, and published in the **Federal Register** on January 5, 1999 (64 FR 385–387, Docket No. 98–113–1), we amended the pine shoot beetle regulations in 7 CFR 301.50 by designating Hancock, Howard, and Tipton Counties, IN; Chippewa, Delta, Leelanau, Marquette, and Schoolcraft Counties, MI; Cortland, Chemung, and Onondaga Counties, NY; Belmont, Coshocton, Morgan, Noble, and Paulding Counties, OH; Blair and Greene Counties, PA; and Tyler County, WV, as quarantined areas, and adding them to the list of quarantined areas provided in § 301.50–3(c). In addition, we removed paragraph (d) of § 301.50–3 from the regulations. Paragraph (d) contained a map that showed the quarantined counties listed in § 301.50–3(c).

Comments on the interim rule were required to be received on or before March 8, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This document makes final an interim rule effective December 29, 1998, and published in the **Federal Register** on January 5, 1999 (64 FR 385–387, Docket No. 98–113–1). As part of the interim rule, we performed an Initial Regulatory Flexibility Analysis, in which we invited comments about the interim rule as it related to small entities. In particular, we asked for information on the benefits or costs that small entities may incur from the implementation of this interim rule and the economic impact of those benefits or costs. We did not receive any comments on the interim rule, and therefore, received no information of the type we requested. We have therefore based this Final Regulatory Flexibility Analysis on the data available to us. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

The PSB regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. The interim rule amended these regulations by adding 19 counties in IN, MI, NY, OH, PA, and WV to the list of quarantined areas. This action was necessary to prevent the spread of PSB, a pest of pine products, into noninfested areas of the United States.

Currently, there are approximately 223 entities in the 19 newly regulated counties that may be affected by the quarantine. Of those, 82 are Christmas tree growers, 85 are tree nurseries, and 28 are commercial timber companies or commercial sawmills. Approximately 212 of the 223 entities are considered small. The following table shows these entities by type and state.

DISTRIBUTION OF AFFECTED ENTITIES IN 19 COUNTIES THAT WERE ADDED TO THE QUARANTINED AREA FOR PINE SHOOT BEETLE

Entities	State						Total
	NY	PA	IN	MI	OH	WV	
Christmas tree farms	14	3	3	46	16	0	82
Tree nurseries	15	2	1	45	22	0	85
Commercial timber companies or commercial sawmills	12	5	0	7	4	0	28
Other types	0	23	2	0	0	3	28
Total entities	41	33	6	98	42	3	223
Small entities	41	25	6	95	42	3	212

The Small Business Administration (SBA) defines tree nurseries with annual sales of less than $150,000 as small entities. Most tree nurseries specialize in production of deciduous landscape products, but some also produce pine nursery stock and some produce rooted pine Christmas trees. For most of the tree nurseries that produce pine nursery stock and rooted pine Christmas trees, these commodities comprise a minor share of their products or they service largely local populations within the quarantined area. Therefore, we do not expect that they will be notably affected by this rule.

The SBA defines Christmas tree farms with annual sales of less than $500,000 as small entities. Most of the Christmas tree farms in the newly regulated counties are small entities. Of the 82 Christmas tree farms that are in the newly regulated counties, most sell locally to choose-and-cut markets. Therefore, they would not be affected by this rule. Those Christmas tree farms that ship their Christmas trees and tree products outside of the quarantined area would be most affected by the quarantine. In some newly quarantined areas, up to 5 percent of the Christmas trees are sold through the wholesale market. Christmas tree farms in the newly quarantined areas in Michigan, New York, and Ohio shipped 6 percent, 12 percent, and 10 percent, respectively,

of their Christmas trees and tree products to markets outside the quarantined areas in 1997. In Pennsylvania, Christmas tree farms in the newly quarantined counties shipped all of their Christmas trees and tree products outside the quarantined area in 1997. Therefore, the Christmas tree farms in the newly quarantined counties in Pennsylvania will be most affected by the quarantine.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of PSB.

The alternative to the interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the quarantine of the 19 counties listed in this document is necessary to prevent the artificial spread of PSB.

This rule contains no reporting or recordkeeping requirements.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 64 FR 385–387 on January 5, 1999.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 29th day of March 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–8154 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93–076–13]

RIN 0579–AA59

Animal Welfare; Marine Mammals; Swim-with-the-Dolphin Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reconsideration of final rule and suspension of enforcement.

SUMMARY: We are hereby suspending the enforcement of those provisions of the Animal Welfare regulations and standards that deal with ''swim-with-the-dolphin programs.'' In addition, we are soliciting public comment on all aspects of the suspended regulations and on all human/marine mammal interactive programs.

DATES: This suspension of enforcement is effective April 2, 1999. We invite you to comment on this docket. We will consider all comments that we receive by June 1, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 93–076–13, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 93–076–13.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Ave., SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usdaa.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3; part 2 contains general requirements for regulated parties; and part 3 contains specific requirements for the care and handling of certain animals.

On January 23, 1995, we published in the **Federal Register** a proposal (60 FR 4383–4389, Docket No. 93–076–2) to amend the regulations in 9 CFR part 3, subpart E (referred to below as the regulations), by establishing standards for ''swim-with-the-dolphin'' (SWTD) programs. After reviewing comments from the public on the proposal, we published a final rule in the **Federal Register** on September 4, 1998 (63 FR 47128–47151, Docket No. 93–076–10), that made final certain of the proposed provisions, along with changes we made based on the comments received. The final rule became effective October 5, 1998.

Following publication of the final rule, a number of parties affected by the rule contacted us and asked us to address issues not specifically raised in the final rule or the proposed rule regarding shallow water interactive programs. We are using the term ''shallow water interactive program'' because it has come to our attention that a number of facilities have different names for their programs in which a member of the public enters the primary enclosure of an SWTD cetacean to interact with the animal and in which the participants remain primarily stationary and non-buoyant. For purposes of this notice, it is our intent that the term ''shallow water interactive program'' encompass wade programs, encounter programs, or any other program as described above.

The regulated parties stated that it had not been clear to them that we intended the provisions of the rule to apply to shallow water interactive programs, and that, because of this misunderstanding, they had not been able to participate fully in the rulemaking process.

Although the definition of an SWTD program set forth in the proposed rule

did not exclude shallow water interactive programs, our use in the proposal of the word ''swim'' may have led a segment of the regulated industry to assume that the regulations would not apply to shallow water interactive programs in which the participants remain primarily stationary and non-buoyant. In addition, the confusion of the regulated parties may have been heightened by our not specifically referring to ''wading'' until the final rule.

It was always our intent to include shallow water interactive programs within the scope of the rule. However, between publication of the proposed rule and the final rule, a number of facilities began new shallow water interactive programs, which we were not aware of. Therefore, we did not specifically address the potential economic impact of the rule on these new shallow water interactive programs.

We recognize that the number and makeup of shallow water interactive programs may have changed since we initiated SWTD rulemaking several years ago, and that the industry has gained more experience in operating such programs. The parties who contacted us following publication of the final rule expressed concern that the final rule did not fully reflect, among other things, the current issues involved in shallow water interactive programs.

In response to these concerns, on October 14, 1998, we published a notice in the **Federal Register** (63 FR 55012, Docket No. 93–076–12) in which we announced that, as of the effective date of the final rule and until further notice, we would not apply to wading programs (referenced in this document as shallow water interactive programs) the standards in § 3.111(a) of the final rule for space for the interactive area in a SWTD program, or the standards in § 3.111(e)(4) for human participant/attendant ratio. We stated that, for the purposes of that notice, we considered wading programs to be those in which human participants interact with cetaceans by remaining stationary and non-buoyant. Additionally, we expressed our intention to examine more fully the issue of interactive space requirements and human participant/attendant ratios for programs in which contact between humans and cetaceans is limited and controlled, with negligible movement of humans within the enclosure.

Additionally, we were made aware of concerns regarding the specificity of the experience and training requirements for SWTD program personnel, including the attending veterinarian. Some parties expressed concern regarding the nature of the veterinary care requirements and the issue of interactive session time limits for the animals.

We also have become aware of two unintentional consequences concerning the exclusions contained in the definition of an SWTD program. First, our intent was to exclude from regulation feeding and petting pools where the participant *does not enter* the primary enclosure of the animal. However, the wording we used in the rule does not make clear the narrow exclusion we intended.

Second, we intended to exclude from regulation the participation of a limited number of members of a larger public audience that are part of a presentation or performance (e.g., when one or two members of an audience are invited to interact with an animal as part of the overall presentation or performance). Contrary to our intent, however, by inserting the exclusion in the definition of an SWTD program, we inadvertently allowed this exclusion to apply to shallow water interactive programs where all or a significant number of program participants are provided the opportunity to enter the primary enclosure to interact with the animal.

While we could attempt to address these issues by responding individually to each concern or point, we believe that the most effective way to address the concerns and confusion surrounding the SWTD rule is to suspend enforcement of the provisions and seek new, additional, and more current scientific, documentable, or other information on human/marine mammal interactive programs. This information will aid the agency in determining the most appropriate action regarding the regulation of human/marine mammal interactive programs.

In this notice, we are soliciting information from the public on all aspects of human/marine mammal interactive programs, and are asking that commenters give special consideration to the issues set forth below. We request that commenters submit scientific, documentable, or other information to support their positions.

1. Based on past and present experience with human/marine mammal interactive programs, is there a need to have regulations specific to these programs under the Animal Welfare Act?

2. Should shallow water interactive programs be regulated in the same way as other regulated interactive programs?

3. How much space (length, width, and depth) is needed in the interactive area for shallow water interactive programs? Is there a need for deeper water somewhere in the interactive area?

4. For shallow water interactive programs, what participant-to-attendant and participant-to-animal ratios have been or can be used safely?

5. For the purposes of this notice, we consider shallow water interactive programs to be those in which human participants enter the primary enclosure of the marine mammal to interact with the animal, but in which human participants remain primarily stationary and non-buoyant. Do you believe this definition adequately describes shallow water interactive programs? If not, what definition do you consider satisfactory?

6. If shallow water interactive programs are regulated in the same way as other programs, should the heading for § 3.111 of the regulations, which currently reads ''Swim-with-the-dolphin programs,'' be amended to read ''Human/marine mammal interactive programs'' or something similar?

7. In the final rule, we explained that the requirement set forth in the proposed rule that the attending veterinarian for an SWTD program have at least 2 years of full-time experience with cetacean medicine meant that the veterinarian needed at least 4,160 hours of experience. This inclusion of a specific number of hours generated a number of questions and concerns from regulated parties. Is the SWTD rule the appropriate place to address this issue? If so, do you think we should remove the reference to a specific number of hours (while retaining the requirement for at least 2 years of experience)? Is there a better way to make the experience requirement clear? In this notice, we are soliciting information on whether there are alternative requirements that would assure an adequate level of experience and knowledge to achieve the purposes of the regulations.

8. In the final rule, we required that certain employees at a SWTD facility have a specified minimum number of years of experience or training, as follows:

Licensee or manager: At least 6 years experience in a professional or managerial position dealing with captive cetaceans.

Head trainer/behaviorist: At least 6 years experience in training cetaceans for SWTD behaviors in the past 10 years, or an equivalent amount of experience involving in-water training of cetaceans.

Trainer/supervising attendant: At least 3 years training and/or handling experience involving human/cetacean interaction programs.

In this notice, we are soliciting information on whether there are alternative requirements that would assure an adequate level of experience and knowledge to achieve the purposes of the regulations.

9. Should therapy sessions (i.e., interactive sessions involving a therapist or established programs that deal with mentally or physically handicapped persons) be excluded from or covered by regulation? Why do you consider therapy sessions different from or the same as other shallow water interactive programs? Should regulation of therapy sessions be based on the frequency of sessions at the facility or other criteria? If based on frequency, what should be the threshold for regulation?

Accordingly, effective April 2, 1999, in 9 CFR part 1, § 1.1, the definitions of *buffer area, interactive area, interactive session, sanctuary area,* and *swim-with-the dolphin (SWTD) program* are suspended, and, in 9 CFR part 3, § 3.111 is suspended.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 29th day of March 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–8153 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

RIN 3150–AF88

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** on December 30, 1998 (63 FR 71729), that amended the Nuclear Regulatory Commission's regulations on procedures applicable to proceedings for the issuance of licenses for the receipt of high-level radioactive waste at a geologic repository. The action is necessary to correct a typographical error.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1641, e-mail KLW@nrc.gov.

SUPPLEMENTARY INFORMATION:

§ 2.1006 [Corrected]

On page 71738, first column, in § 2.1006, the first sentence of paragraph (a), the reference to ''§ 2.1003(c)'' should be corrected to read ''§ 2.1003(a)(4).''

Dated at Rockville, Maryland, this 26th day of March, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–8161 Filed 4–1–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–38–AD; Amendment 39–11107; AD 99–08–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–600, –700, and –800 series airplanes. This action requires an inspection of the power distribution panels (PDP) to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. This action also requires repetitive torque checks of the terminal attachment screws. This amendment is prompted by reports indicating the loss of electrical power from the engine-driven generators or the auxiliary power unit due to overheating, melting, and subsequent failure of the power feeder terminals. The actions specified in this AD are intended to prevent such conditions, which could result in increased risk of fire and the loss of electrical power from the associated alternating current power source.

DATES: Effective April 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has recently received several reports indicating the loss of electrical power from the engine-driven generators or the auxiliary power unit on Boeing Model 737 series airplanes, due to failure of the power feeder terminals located in power distribution panels (PDP) P91 and P92. This failure is attributed to an overheat condition caused by loosening of the screws that fasten the power feeder terminals to the PDP rigid bus assembly. Investigation revealed that inadequate support of the power feeder terminal allows movement of the terminal during the power feeder wire installation and removal procedures. The consequent loosening of the screws may result in increased electrical resistance and the generation of heat between the power feeder terminal and the rigid busbar at the terminal-to-busbar interface. This condition, if not corrected, may cause overheating and melting of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated alternating current (AC) power source.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–600, –700, and –800 series airplanes of the same type design, this AD is being issued to prevent overheating, melting, and subsequent failure of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated AC power source. This AD requires an inspection of the PDP's to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. This action also requires repetitive torque checks of the terminal attachment screws.

Interim Action

This is considered to be interim action. The FAA is currently considering further rulemaking action to supersede this AD to require repetitive replacement of the PDP rigid bus assembly for all Boeing Model 737–600, –700, and –800 series airplanes. However, the planned compliance time for the repetitive replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–38–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–08–03 Boeing: Amendment 39–11107. Docket 99–NM–38–AD.

Applicability: All Boeing Model 737–600, –700, and –800 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating, melting, and subsequent failure of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated alternating current (AC) power source, accomplish the following:

Initial Inspection

(a) Within 90 days after the effective date of this AD: Perform a one-time general visual inspection to verify proper installation of the power feeder terminals and associated hardware located in power distribution panels (PDP) P91 and P92, in accordance with the following procedures.

Using a flashlight, inspect each of the six power feeder terminals by looking into the access holes located in the plastic cover of the rigid bus assembly. The holes are located on the aft face of PDP's P91 and P92. [Refer to the Boeing 737–600, –700, –800, –900 Airplane Maintenance Manual (AMM), Section 24–21–71/401, Figure 401 (Sheet 1), for the location of PDP P91 and P92.] On PDP P91, the holes are adjacent to terminal blocks TB5001 and TB5002. On PDP P92, the holes are adjacent to terminal blocks TB5005 and TB5006. There are a total of six holes per PDP. [Refer to the Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71/401, Figure 401 (Sheet 2), for the location of the access holes on the PDP's.] Note that although each PDP has nine power feeder terminals, only the six terminals adjacent to the access holes require inspection. Verify that the power feeder terminal is properly installed and held in place on the busbar by the No. 8 socket head cap screw, and verify that the cap screw is inserted into the hole in the terminal. For the proper power feeder terminal and screw buildup, refer to the Boeing 737–600, –700, –800, –900 AMM, Chapter 24–21–71/401, Figure 401 (Sheet 4). The subject power feeder terminal is identified as item [7] and the cap screw as item [12]. This visual inspection does not require loosening or removing any fasteners. The inspection may require looking through the access hole at a slight angle to see the terminal clearly. The terminal can be identified by its shiny metal finish; the current transformer behind the terminal block is made of plastic with a flat black finish. If the power feeder terminal and No. 8 socket head cap screw are not assembled as shown in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71/401, Figure 401 (Sheet 4): Prior to further flight, replace the rigid bus assembly with a new assembly, in accordance with the procedures specified in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–22.

Repetitive Torque Check

(b) Concurrent with the accomplishment of the requirements of paragraph (a) of this AD: Perform a torque check of the attachment screws of the power feeder terminals in accordance with the procedures specified in Boeing Maintenance Tip 737 MT 24–003, dated May 14, 1998. Repeat the torque check thereafter at intervals not to exceed 1,000 flight hours, in accordance with the maintenance tip.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on April 19, 1999.

Issued in Renton, Washington, on March 29, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–8133 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 195–0101a FRL–6235–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Yolo-Solano Air Quality Management District, Monterey Bay Unified Air Pollution Control District, South Coast Air Quality Management District, Santa Barbara County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District, and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following Districts: Yolo-Solano Air Quality Management District (YSAQMD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), South Coast Air Quality Management District (SCAQMD), Santa Barbara County Air Pollution Control District (SBCAPCD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and Kern County Air Pollution Control District (KNCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from organic solvent cleaning, and surface preparation and cleanup. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on June 1, 1999 without further notice, unless EPA receives adverse comments by May 3, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

Sacramento Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The part of this **Federal Register** action which applies to the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

The rules being approved into the California SIP include: YSAQMD Rule 2.31—Surface Preparation and Cleanup, MBUAPCD Rule 433—Organic Solvent Cleaning, SCAQMD Rule 1122—Solvent Degreasers, SBCAPCD Rule 321—Solvent Cleaning Operations, SMAQMD Rule 454—Degreasing Operations, and KNCAPCD Rule 410.3—Organic Solvent Cleaning Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on November 30, 1994, June 3, 1997, September 8, 1997, March 10, 1998, May 18, 1998, and June 23, 1998 respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the Sacramento Metro Area, which includes Yolo County and part of Solano County, the Monterey Bay Area, the South Coast Air Basin, the Santa Barbara-Santa Maria-Lompoc Area, and the Southeast Desert Modified Air Quality Management Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP—Call). On November 15, 1990, the Clean

Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Sacramento Metro Area is classified as severe, the Monterey Bay Area as serious, the South Coast Air Basin as extreme, the Santa Barbara-Santa Maria-Lompoc Area as serious, therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. However, the Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area and, therefore, was not designated and classified upon enactment of the amended ACT. For this reason KNCAPCD is not subject to section 182(a)(2)(A) RACT fix-up requirement. The KNCAPCD is, however, still subject to the requirements of EPA's SIP-Call, because the SIP-Call included all of Kern County.[2]

The State of California submitted many revised RACT rules for incorporation into its SIP on November 30, 1994, June 3, 1997, September 8, 1997, March 10, 1998, May 18, 1998, and June 23, 1998, including the rules being acted on in this document. This document addresses EPA's direct-final action for YSAQMD Rule 2.31—Surface Preparation and Cleanup, MBUAPCD Rule 433—Organic Solvent Cleaning, SCAQMD Rule 1122—Solvent Degreasers, SBCAPCD Rule 321—Solvent Cleaning Operations, SMAQMD Rule 454—Degreasing Operations, and KNCAPCD Rule 410.3—Organic Solvent Cleaning Operations. YSAQMD adopted Rule 2.31 on April 27, 1994, MBUAPCD adopted Rule 433 on March 26, 1997, SCAQMD adopted Rule 1122 on July 11, 1997, SBCAPCD adopted Rule 321 on September 18, 1997, SMAQMD adopted Rule 454 on April 3, 1997, and KNCAPCD adopted Rule 410.3 on May 7, 1998. These submitted rules were found to be complete on January 30, 1995 (2.31), September 5, 1997 (433), October 20, 1997 (1122), July 17, 1998 (454) and August 25, 1998 (410.3) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

These rules regulate VOC emissions from organic solvent cleaning operations, and surface preparation and clean-up activities. VOCs contribute to the production of ground level ozone and smog. This rules were originally adopted as part of these Districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to MBUAPCD Rule 433, SCAQMD Rule 1122, SBCAPCD Rule 321, SMAQMD Rule 454, and KNCAPCD Rule 410.3 is entitled, Control of Volatile Organic Emissions from Solvent Metal Cleaning, EPA–450/2–77–022, November 1977. YSAQMD Rule 2.31 controls emissions from a source category for which EPA has not issued a CTG. Accordingly this rule was evaluated against the general RACT requirements of the Clean Air Act (CAA section 110 and part D). The rule was also compared with other district rules covering the same source category to ensure consistency. Further interpretation of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is currently no version of YSAQMD Rule 2.31, Surface Preparation and Cleanup SIP. The submitted rule includes the following provisions:

- Applicability section defining who is subject to the rule,
- Exemptions for dry cleaning and solvent cleaning operations, which are subject to other district rules. Wipe cleaning, automated spray systems, aerosol products and cleaning of high precision optics are exempted from specific provisions of this rule.
- Standard VOC limits for solvents to perform cleaning activities,′
- Monitoring and record keeping section containing the description of records that must be kept and a listing of test methods to be used in determining compliance.

On February 26, 1996, EPA approved into the SIP a version of Rule 433—Organic Solvent Cleaning that had been adopted by MBUAPCD on June 15, 1994. MBUAPCD submitted Rule 433—Organic Solvent Cleaning includes the following significant changes from the current SIP:

- A revised applicability section with an added reference to the National Emission Standard for Hazardous Air Pollutants (NESHAP),

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Sacramento Metro Area, the Monterey Bay Area, the South Coast Air Basin, the Monterey Bay Area, and the Santa Barbara-Santa Maria-Lompoc Area retained their designation and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. The Southeast Desert Air Basin Portion of Kern County was designated nonattainment on November 6, 1991 (56 FR 56649). On April 25, 1995, EPA published a final rule granting the State's request to reclassify the Sacramento Metro Area to severe from serious (60 FR 20237). This reclassification became effective on June 1, 1995. On December 10, 1997, EPA published a final rule reclassifying the Santa Barbara-Santa Maria-Lompoc Area to serious from moderate. This reclassification became effective on January 9, 1998.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

- A revised rule effectiveness date which coincides with the rule adoption date,
- A reference to MBUAPCD Rule 101—Definitions, in lieu of a detailed listing of exempt compounds, and
- an added reference to EPA's Guidelines for Determining Capture Efficiency, dated January 9, 1995.

On November 4, 1996, EPA approved into the SIP a version of Rule 1122—Solvent Degreasers that had been adopted by SCAQMD on April 5, 1991. SCAQMD submitted Rule 1122—Solvent Degreasers includes the following significant changes from the current SIP:

- The rule language was modified to eliminate ambiguities between Rule 1122—Solvent Degreasers, and 1171—Solvent Cleaning Operations,
- The requirements covering remote reservoir cold cleaners were removed from this rule to be regulated under Rule 1171,
- Limits the VOC content of cleaning material for batch loaded cold cleaners to 50 grams per liter, or less,
- Augmented methods of controlling emissions from open top vapor degreasers by adding the requirements of a superheated vapor zone, and an automated parts handling system,
- Added design requirements and control standards for Air-tight and air-less cleaning systems,
- Added and defined ''clean air solvent'' and describes how to obtain clean air solvent certification, which, when displayed, qualifies for an exemption from the requirements of this rule,
- Exempts degreasing operations using halogenated solvents, which are regulated under 40 CFR Part 63, Subpart T (NESHAP), and
- Requires monthly records to be kept in the format shown in appendix A to this rule.

There is currently no version of SBCAPCD Rule 321—Solvent Cleaning Operations in the SIP. The submitted Rule includes the following provisions:

- An applicability section,
- Exempts cleaning operations employing solvents with 2% or less VOC content, and cleaning operations using halogenated solvents regulated under 40 CFR Part 63, Subpart T (NESHAP).
- Definitions of pertinent terms,
- General and specific design and operating requirements covering all types of solvent cleaning operation.
- Test methods to be used to determine compliance with the requirements of this rule, and
- Record keeping requirements.

On August 4, 1994, EPA approved into the SIP a version of Rule 454—Degreasing Operations that had been adopted by SMAQMD on February 23, 1993. SMAQMD submitted Rule 454—Degreasing Operations includes the following significant changes from the current SIP:

- Added an exemption for cleaning solvents with VOC content of 5% or less, by weight,
- Exempts solvent cleaning operations using halogenated solvents which fall under the requirements of 40 CFR Part 63, Subpart T (NESHAP), and
- Referenced SMAQMD Rule 101—General Provisions and Definitions in lieu of the detailed listing of exempt components.

On October 7, 1996, EPA approved into the SIP a version of Rule 410.3—Organic Solvent Degreasing Operations that had been adopted by KNCAPCD on March 7, 1996. KNCAPCD submitted Rule 410.3—Organic Solvent Degreasing Operations includes the following significant changes from the current SIP:

- Added the definition of ''low volatility solvents'' and provided an exemption from the free-board height requirement, when using this type of solvents, and
- Added an exemption for degreasers using halogenated solvents which must comply with the requirements of 40 CFR Part 63, Subpart T (NESHAP).

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, YSAQMD Rule 2.31—Surface Preparation and Cleanup, MBUAPCD Rule 433—Organic Solvent Cleaning, SCAQMD Rule 1122—Solvent Degreasers, SBCAPCD Rule 321—Solvent Cleaning Operations, SMAQMD Rule 454—Degreasing Operations, and KNCAPCD Rule 410.3—Organic Solvent Cleaning Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 1, 1999 without further notice unless the Agency receives adverse comments by May 3, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 16, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(207)(i)(C)(*7*),

(249), (254)(i)(C)(*3*), (255)(i)(A)(*3*), (256)(i)(C) and (258), to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(207) * * *

(i) * * *

(C) * * *

(*7*) Rule 2.31, adopted on April 27, 1994.

* * * * *

(249) New and amended regulations for the following APCD's were submitted on September 8, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1122, adopted on March 2, 1979 and amended on July 11, 1997.

* * * * *

(254) * * *

(i) * * *

(C) * * *

(*3*) Rule 321, adopted on February 24, 1971 and revised on September 18, 1997.

* * * * *

(255) * * *

(i) * * *

(A) * * *

(*3*) Rule 454, adopted on June 5, 1979 and amended on April 3, 1997.

* * * * *

(256) * * *

(i) * * *

(C) Kern County Air Pollution Control District.

(*1*) Rule 410.3, adopted on June 26, 1979 and revised on May 7, 1998.

* * * * *

(258) New and amended regulations for the following APCD's were submitted on June 3, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 433, adopted on June 15, 1994 and revised on March 26, 1997.

* * * * *

[FR Doc. 99–8083 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6317–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Williams Pipe Line Disposal Pit Site from the National Priorities List (NPL).

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Williams Pipe Line Disposal Pit Site (Site) in Minnehaha County, Sioux Falls, South Dakota, from the National Priorities List(NPL). The NPL is Appendix B of Title 40 of the Code of Federal Regulations (40 CFR) part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA in consultation with the state of South Dakota has determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Jaramillo, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Mailcode: 8EPR–SR, Denver, CO 80202, telephone (303) 312–6580.

SUPPLEMEMTARY INFORMATION: The site to be deleted from the NPL is: the Williams Pipe Line Disposal Pit in Minnehaha County, Sioux Falls, South Dakota.

A Notice of Intent to Delete for this site was published on November 25, 1998, (63 FR 65161). The closing date for comments on the Notice of Intent to Delete was January 4, 1999. No comments were received during the comment period. In response, since no comments were received EPA is going forward with the Site deletion from the NPL.

EPA identifies sites that appear to present a significant risk to public health, welfare, and the environment and it maintains the NPL as a list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future, NCP § 300.425(e)(3). Deletion of a site from the NPL does not affect the responsible party of liability or impede agency efforts to recover cost associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 24, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

For reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p 193.

Appendix B [Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site Williams Pipe Line Co. Disposal Pit, Sioux Falls, SD''.

[FR Doc. 99–7908 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2095; Amendment 195–66]

[RIN 2137–AC 11]

Pipeline Safety: Adoption of Consensus Standards for Breakout Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule.

SUMMARY: This final rule incorporates by reference consensus standards for aboveground steel storage tanks into the hazardous liquid pipeline safety regulations. These standards apply to the design, construction, and testing of new tanks, and the repairs, alterations and replacement of existing tanks. All new and existing breakout tanks are also subject to the operating and maintenance requirements specified in this rule. The incorporation by reference of these thirteen standards will significantly improve the minimum level of safety applicable to the transportation and storage of petroleum and petroleum products at breakout tanks throughout the United States.

DATES: *Effective Date:* This final rule takes effect May 3, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register May 3, 1999.

Compliance date: Except under § 195.432, compliance with consensus

standards that are incorporated by reference is not required until October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Mike Israni, Office of Pipeline Safety (OPS), telephone: (202) 366–4571, FAX: (202) 366–4566, e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this rule; or the Docket Facility, telephone (202) 366–9329, regarding copies of this final rule or other material in the docket.

Comments may be accessed electronically at http://dms.dot.gov. General information about the RSPA/ Office of Pipeline Safety programs can be obtained by accessing OPS's Internet home page at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The failure of a storage tank not associated with pipeline transportation provided much of the incentive to improve consensus standards for aboveground steel storage tanks. On January 2, 1988, at a barge terminal in Floreffe, Pennsylvania, a newly recommissioned storage tank suddenly collapsed and released 3.9 million gallons of diesel oil. Although the earthen dike contained most of the diesel oil, an estimated 750,000 gallons were spilled into the Monongahela River and eventually flowed into the Ohio River.

The publicity and costly consequences of this failure caused widespread concern about the safety of all aboveground storage tanks. Responding to the aftermath of this event, petroleum industry engineers and the American Petroleum Institute considerably updated existing standards and developed several new standards.

In the 10-year period from 1987–1996, operators of breakout tanks reported 152 accidents to RSPA. These accidents caused no deaths; three injuries to pipeline personnel; $12,422,894 of property damage; and 153,972 spilled barrels. The causes were reported as: 25 leaks in the tank floor; 30 incorrect operations; 8 outside forces; and 26 malfunctions of control or relief equipment. The remaining 63 were related to problems with floating roof water drain lines, lightning, and miscellaneous other causes.

The pipeline safety regulations have not been revised to reflect the updating and development of new consensus standards for aboveground steel storage tanks. Instead, they remain very limited in scope and too general to address many safety-related aspects.

Consequently, RSPA recognizes the need to update the safety regulations for breakout tanks. The most appropriate means of updating is the incorporation by reference into Part 195 of selected consensus standards. They are widely understood and have been extensively implemented by the operators of breakout tanks.

RSPA provided operators of breakout tanks, the petroleum industry and the general public the opportunity to provide early input on RSPA's intent to incorporate consensus standards for storage tanks through public meetings.

RSPA contracted with the Texas Transportation Institute (TTI) to obtain professional assistance in the selection of consensus standards to be incorporated into the breakout tank regulations. TTI is associated with Texas A&M University at College station, Texas.

All consensus standards are being adopted on a prospective basis, meaning design, construction and testing requirements apply to new tank construction and future repairs, alterations or replacements of existing tanks. Operating and maintenance requirements apply to future operating and maintenance activities. The deadlines for compliance with the new requirements are specified in the appropriate sections of this rule.

For additional background information regarding this rule please refer to the Notice of Proposed Rulemaking (NPRM) [63 FR 27903; May 21,1998].

Proposed Rule

RSPA published an NPRM (63 FR 27903; May 21, 1998), proposing to incorporate 12 consensus standards for aboveground breakout storage tanks into 49 CFR Part 195. In addition, a 13th consensus standard, API 510, has been added for inspection of high pressure vessels built to API standard 2510. The NPRM requested interested persons to submit comments by July 20, 1998. It was also stated that late filed comments would be considered as far as practicable. We received comments from nine sources including American Petroleum Institute (API) and U.S. Environmental Protection Agency (EPA) prior to 7/20/98. After which, API and EPA filed second set of comments on 10/19/98 and 12/3/98 respectively.

Final Rule

This final rule incorporates consensus standards for aboveground breakout storage tanks into 49 CFR Part 195. Currently § 195.3 lists 18 publications that have been incorporated by reference into Part 195. This rule now incorporates all or parts of an additional six API standards (510, 620, 650, 653, 2000 and 2510), one API Specification (12F), four API Recommended Practices (651, 652, 2003 and 2350), one API Publication (2026), and NFPA 30.

Subpart A—General.

Revised § 195.1(c) explains the applicability of Part 195 to breakout tanks. It further explains that anhydrous ammonia breakout tanks need not comply with certain requirements in Part 195.

Listed below are 13 standards incorporated by reference wholly or partially. For further information about these documents please refer to the NPRM [63 FR 27903; May 21, 1998] or the individual standards.

1. API SPECIFICATION 12F—Specification for Shop Welded Tanks for Storage of Production Liquids, Eleventh Edition, November 1, 1994.

2. API 510—Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration, Eighth Edition, June 1997.

API 510 has been added for purposes of inspection of high pressure breakout tanks built to API standard 2510.

3. API STANDARD 620—Design and Construction of Large, Welded, Low-Pressure Storage Tanks, Ninth Edition, February 1996 (Including Addenda 1 and 2).

4. API STANDARD 650—Welded Steel Tanks for Oil Storage, Ninth Edition, July 1993 (Including Addenda 1 through 4).

5. API RECOMMENDED PRACTICE 651—Cathodic Protection of Aboveground Petroleum Storage Tanks, Second Edition, Dec. 1997.

6. API RECOMMENDED PRACTICE 652—Lining of Aboveground Petroleum Storage Tank Bottoms, Second Edition, December 1997.

7. API STANDARD 653—Tank Inspection, Repair, Alteration, and Reconstruction, Second Edition, December 1995 (Including Addenda 1 and 2).

8. API STANDARD 2000—Venting Atmospheric and Low-Pressure Storage Tanks, Fourth Edition, September 1992.

9. API RECOMMENDED PRACTICE 2003—Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents, Sixth Edition, September 1998.

10. API PUBLICATION 2026—Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service, Second Edition, April 1998.

11. API RECOMMENDED PRACTICE 2350—Overfill Protection for Storage Tanks In Petroleum Facilities, Second Edition, Jan. 1996.

12. API STANDARD 2510—Design and Construction of LPG Installations, Seventh Edition, May 1995.

13. NFPA 30—Flammable and Combustible Liquids Code, 1996 Edition.

Subpart C—Design Requirements

The revised § 195.132 now includes requirements for critical engineering subjects, such as materials, design, fabrication, erection, methods of inspecting joints, welding procedure and welder qualifications, and marking. It also contains other important topics including foundations, external floating roofs, seismic design, aluminum dome roofs, internal floating roofs, inspection and testing, and requirements for operating at elevated temperatures. These topics are typical of the engineering subjects covered by incorporating by reference the following standards:

(1) API Specification 12F for shop-fabricated tanks with vapor space pressure that are approximately atmospheric with capacity of 90 to 750 barrels.

(2) API Standard 650 for atmospheric pressure tanks with pressures not greater than 2.5 psig.

(3) API Standard 620 for low pressure tanks with vapor space pressures not greater than 15 psig.

(4) API Standard 2510 for LPG tanks with capacity of 2000 gallons or more and pressures greater than 15 psig.

Subpart D—Construction

A new § 195.205 on Repair, alteration and reconstruction of breakout tanks that have been in service requires that tanks built to API 650 and API 12C are to be modified in accordance with API Standard 653. Also, tanks built to API 620 may be modified by the design, welding examination and testing provisions of API standard 653 in proper conformance with the stresses, joint efficiencies, material and other provisions in API standard 620. For tanks built to API 2510 modifications are to be performed in accordance with the API 510.

In § 195.242 requirements for cathodic protection have been amended for the aboveground tanks by referencing API Recommended Practices 651 for the bottoms of the tanks and API Recommended Practices 652 for the internal lining of the tank bottom.

In § 195.264, requirements for impoundment, protection against entry, normal/emergency venting and pressure/vacuum relief for the above ground breakout tanks have been revised. In addition some requirements of NFPA 30 have been added for impoundment by diking.

Subpart E—Pressure Testing

A new § 195.307 requires pressure testing of breakout tanks newly placed in service or returned to service after 18 months. Testing requirements reference specified tank standards.

Subpart F—Operation and Maintenance

A new § 195.405 requires protection against ignitions and safe access/egress involving floating roofs in accordance with API RP 2003.

Section 195.416 has been amended by adding a provision for the inspection of cathodic protection systems for breakout tanks in accordance with API RP 651.

Section 195.428 has been amended by adding provisions for the installation of over pressure safety devices and overfill protection systems in accordance with API RP 2350 and API Standard 2510.

Section 195.432 has been revised to provide maintenance inspection of breakout tanks and diking in accordance with the provisions of API Standard 653, and API Standard 2510.

Discussion of Comments

We received comments from the following sources in response to the NPRM:

Trade associations: American Petroleum Institute (API); The Fertilizer Institute (TFI); Steel Tank Institute (STI); and Independent Liquid Terminals Association (ILTA)

Standards organization: National Fire Protection Association (NFPA)

Pipeline operators: Conoco Pipeline Company (CONOCO); TE Products Pipeline Company (TEPPCO); and Amoco Pipeline Company (AMOCO)

Federal agency: United States Environmental Protection Agency (EPA)

In addition, as discussed under another heading below, the Technical Hazardous Liquid Pipeline Safety Standards Committee considered and submitted a report on the proposed rules.

Five of the nine commenters (API, AMOCO, CONOCO, TEPPCO, NFPA) generally supported the NPRM, but expressed concerns or suggested changes, CONOCO by endorsing API's views. EPA opposed our regulatory approach of referencing consensus standards, but nevertheless submitted comments on specific issues. Of the remaining three commenters, TFI and ILTA raised particular points about the NPRM, and STI recommended additional standards to incorporate by reference.

We did not consider the additional consensus standards STI suggested because the suggestions were not tied to any particular aspect of the NPRM. All other significant comments on the NPRM are summarized in this section of the preamble, where we also explain our response to those comments.

Organization of Breakout Tank Rules

API commented that all substantive regulations on breakout tanks should be consolidated in a single subpart in Part 195, rather than scattered among several subparts.

We did not adopt this suggestion because we consider it impractical. Part 195 defines a ''pipeline system'' to include breakout tanks. Breakout tanks also come within the meaning of ''pipeline facility'' as defined in Part 195. Consequently, apart from the final rules in this document, there are many substantive regulations in Part 195 governing pipeline facilities or pipeline systems that apply to breakout tanks. For example, the accident reporting requirements in Subpart B, the operations and maintenance manual requirements in § 195.402, and the training requirements in § 195.403 apply to breakout tanks because these regulations cover all parts of a pipeline system. So to combine all the substantive requirements for breakout tanks in a single subpart would require duplicating many regulations or making many cross references, and neither approach is desirable.

Still we believe readers could benefit from more direction on how to recognize which Part 195 regulations apply to breakout tanks. So we have replaced § 195.1(c) to explain the applicability of Part 195 to breakout tanks. We also revised § 195.1(c) by deleting certain compliance deadlines that have expired.

Incorporation by Reference

Two commenters indicated there is possibly some confusion over the exact composition of matter incorporated by reference. First, TEPPCO asked whether a document or part of a document that is referenced by material incorporated by reference is similarly incorporated by reference. AMOCO declared that such internal references have no regulatory force. On the contrary, we believe if a document part that is incorporated by reference refers to a separate part of the same document or another document, compliance with that separate part is required if it is necessary for compliance with the original referenced document part. If the internal reference is informational or advisory and not necessary for compliance, then operators are not obliged to comply with it.

TEPPCO and API suggested that we amend the section in Part 195 that lists referenced documents (§ 195.3) to state which parts of the documents are incorporated by reference if the whole document is not incorporated. Section 195.3(a) now provides that an entire document is not incorporated by reference in Part 195 when only a part of the document is referenced. Whether an entire document or only part of a document is referenced depends on the scope of the reference in the Part 195 section that states the reference. For example, under proposed § 195.132, certain breakout tanks would have to be designed and constructed in accordance with certain API documents. Thus, all provisions of the API documents that apply to design and construction of breakout tanks would be incorporated by reference. If those provisions are found in only parts of the documents, then only those parts would be incorporated by reference. But if an entire document governs design and construction, the entire document would be incorporated by reference. Although we do not think it would be practical to duplicate in § 195.3 the scope of the various references included throughout Part 195, we are amending the lead-in to § 195.3(c) to clarify that the listed publications may be referenced in whole or in part in Part 195.

Engineering Judgment

API commented that its consensus standards were developed as an aid to engineering judgment, not as a replacement for it. It said that its consensus standards may not fit every tank situation and were not intended to be strictly met. Therefore, API suggested that in enforcing the standards, we recognize the need for engineering judgment and look for attainment of objectives (such as tank integrity and release prevention) rather than strict adherence to the terms of the standards.

On this issue, EPA noted that in many of API's consensus standards the requirements are optional. A document's foreword may permit operators not to meet sections they consider unnecessary to follow in particular circumstances. As an example, EPA cited API 653 (referenced in proposed §§ 195.205, 195.307, and 195.432) in which the foreword states ''If tanks are inspected, repaired, altered, or reconstructed in accordance with this standard, the owner/operator may elect to modify, delete, or amplify sections of this standard.''

In the NPRM, we proposed the following levels of compliance for the different types of API and NFPA documents that would be incorporated by reference:

- Standard, Specification or Code—An operator would be expected to comply with the provisions.
- Recommended Practice—An operator would be expected to follow the provisions unless the operator notes in the procedural manual the reasons why compliance with all or certain provisions is not necessary for the safety of a particular breakout tank or tanks.
- Publication—These provisions provide guidelines, safety practices and precautions for the operator's review and consideration for inclusion in the procedural manual.

By this proposal we meant that operators would have to meet the referenced parts of standards, specifications, and codes according to the terms of those parts. Although operators could decide not to abide by referenced parts of recommended practices or publications, we did not intend for them to have this same discretion regarding compliance with referenced parts of standards, specifications, or codes. Therefore, in the final rules, none of the references to parts of standards, specifications, or codes may be interpreted to include a statement in the document's foreword or elsewhere outside the referenced part that would absolve the operator of its responsibility to comply with the referenced part. For example, the statement in section 1–1.3 of NFPA 30 that the code does not apply to ''[t]ransportation of flammable and combustible liquids, as governed by the U. S. Department of Transportation'' does not nullify the references to particular sections of NFPA 30 in final § 195.264.

Nonetheless, if the referenced part of a standard, specification, or code allows or calls for the use of engineering judgment, in determining compliance with the referenced part, we will not object to the use of judgment. We will, however, compare the judgment used against what is reasonable under the circumstances. If an operator wishes to achieve a particular objective in a way that differs from the referenced part of a standard, specification, or code or falls outside the range of allowable judgment, it can request permission to do so by applying to us or the appropriate state agency, as applicable, for a waiver of the referenced part (see 49 U.S.C. 60118).

EPA also raised an enforcement issue with regard to the proposed references to API recommended practices (§§ 195.242 (c) and (d), 195.405, 195.416(j), and 195.428(c)). EPA said that although an operator would have to include in its procedural manual its reason for not applying a practice to a particular tank, the proposal did not provide a way for us to order compliance with the practice if we do not agree with the operator's reason.

This additional provision is not needed, however, because operators' procedural manuals are subject to review and amendment by our enforcement personnel. Under the enforcement procedures in 49 CFR 190.237, if our enforcement personnel have reason to believe an operator's operations and maintenance procedures are inadequate for safety, they conduct proceedings to determine the adequacy and can order the operator to change any procedures found inadequate. In addition, under 49 CFR 190.233, we can order immediate corrective action for any pipeline facility that we believe poses a serious threat to life or property.

Performance Standards v. Consensus Standards

EPA stated that requiring operators to apply consensus standards would lock them into present-day technologies and practices, and prevent them from using innovative techniques until we grant special approvals or reference a later consensus standard that permits the new techniques. As an alternative approach, EPA recommended that we adopt tank rules that establish the level of performance to be achieved, leaving operators free to use the latest technologies and practices to achieve it.

In contrast, API pointed out that its standards are regularly revised and reflect constant improvement by committees of experts, so that use of new technologies is not discouraged. API also noted that we have been amending our pipeline safety standards to stay apace with changes to referenced consensus standards.

We recognize the advantage of performance standards, and Part 195 has many standards of this kind. But it also has standards that incorporate consensus standards by reference. Consensus standards have been referenced when performance standards were not available or could not be developed soon enough to meet the need for safety regulation. Still, in our experience, referencing consensus standards has not stymied the use of new pipeline technologies. As API said about its own standards, most of the referenced standards are updated regularly. Moreover, our pipeline safety regulations allow operators to use new technologies permitted under the latest editions of referenced consensus standards as long as the new technology does not result in less safety than

required by the referenced edition (see § 195.101).

Environmental Protection

EPA said that regulations other than the proposed referenced standards would be needed to protect the environment adequately against potential tank spills. It said operators should be required to evaluate breakout tank areas and provide facilities, equipment, or practices at critical locations to prevent possible major oil discharges from leaving the breakout tank area. EPA also recommended that we require proper security measures to protect against releases from vandalism.

This comment did not acknowledge our many existing regulations for breakout tanks that require evaluation and preventive practices to guard against environmental damage. For instance, § 195.402(c)(4) requires operators, as part of their detailed operations and maintenance plan, to determine which facilities would require an immediate response to prevent hazards. § 195.403(a)(3) requires training to recognize conditions likely to cause emergencies in the event of malfunctions or failures; and under § 195.436, operators must protect breakout tank areas against vandalism and unauthorized entry. Further regulations in 49 CFR Part 194 require operators to develop and follow contingency plans for responding to spills from breakout tanks, and to provide adequate resources for oil spill response. Even more environmental protection would be required by the proposed rules that reference consensus standards, especially those standards for corrosion control of tank bottoms and spill impoundment. Therefore, we think the combination of existing breakout tank regulations and those we are adopting in this final rule will result in an adequate level of environmental protection. But we will continue to monitor the safety and environmental record of breakout tanks and take any further action that is warranted by new circumstances.

Overlapping Federal Regulation of Breakout Tanks

ILTA voiced concern about the dual federal regulation of storage tanks at for-hire and marketing terminals. This commenter noted correctly that a storage tank comes under the definition of ''breakout tank'' in Part 195 if it receives a petroleum product by pipeline and then reinjects it into a pipeline for continued transportation. It said the tank would be subject to EPA's Spill Prevention Control and Countermeasure (SPCC) regulations if it can also transfer the product to another mode of transit serving the terminal. ILTA also pointed out that our present definition of ''breakout tank'' is not supported by the 1971 memorandum of understanding (MOU) between DOT (U.S. Coast Guard) and EPA on transportation-related facilities (40 CFR Part 112, App. A), and urged us to continue to work with EPA to lessen the problems of overlapping jurisdiction. In its comment on this subject, EPA asked that we amend our definition of ''breakout tank'' to adhere to the Congressional intent that we regulate only those storage tanks that are ''incidental to pipeline transportation.'' The agency suggested that doing so would require us to exclude tanks that serve non-pipeline modes of transportation.

First, it is important to point out that our current definition of ''breakout tank'' was adopted with full cognizance that our statutory authority over hazardous liquid storage tanks is limited to tanks that are incidental to pipeline transportation (46 FR 38358; July 27, 1981). We continue to consider this limitation to bar the regulation of storage tanks used exclusively in non-pipeline modes of transportation, but not to bar the regulation of tanks used intermodally with pipelines, such as breakout tanks that also serve cargo vessels, tank cars, or tank trucks. The application of Part 195 to intermodal breakout tanks was an issue in the case of *Exxon Corporation* v. *United States Secretary of Transportation* (978 F.Supp. 946), and the court concluded the tank in question was subject to Part 195.

Indeed, we believe that safety and environmental protection are enhanced under our definition of ''breakout tank''. The regulations we are issuing today incorporate up-to-date pipeline industry safety practices that were recently developed by expert engineers to prevent significant storage tank accidents. For this reason, we think these regulations may be more appropriate than EPA's SPCC rules to prevent pipeline breakout tank accidents. And excluding certain categories of tanks from the regulations as a way of minimizing regulatory overlap may not be in the public interest. The members of our Technical Hazardous Liquid Pipeline Safety Standards Committee who represent environmental interests supported the NPRM's approach to environmental protection when the committee discussed the merits of the NPRM.

Nevertheless, we are concerned that the industry faces overlapping federal storage tank regulations at intermodal transportation terminals. While the 1971 MOU applies to the Coast Guard's and EPA's regulatory authority under the Federal Water Pollution Control Act, we cannot ignore its spillover effect on our own regulatory program. Therefore, we will continue to talk to EPA officials hopefully to reach agreement on the best way for each agency to exercise its regulatory authority at intermodal transportation terminals without creating undue burdens on industry. In this regard, we will work to (1) clarify each agency's jurisdiction to issue pollution prevention and response planning regulations, and define which facilities are jointly regulated and which are exclusively subject to EPA or RSPA regulations; (2) develop a way to resolve site-specific jurisdictional disputes; (3) develop information that explains each agency's jurisdiction at intermodal facilities; (4) jointly oversee operator compliance; (5) address response preparedness issues at certain facilities; and (6) commit additional resources to regional response activities.

Anhydrous Ammonia Tanks

TFI argued that many of the proposed rules were not appropriate for anhydrous ammonia breakout tanks. It said that because of their unique characteristics, anhydrous ammonia breakout tanks are not treated the same as petroleum breakout tanks in matters of design, construction, operation, and maintenance. TFI listed various problems it saw with the proposed rules and, in some cases, recommended alternative consensus standards. This commenter advised that we either exclude anhydrous ammonia breakout tanks from the final rules or adopt appropriate requirements for these tanks.

Because the existing Part 195 standards that apply to breakout tanks apply equally to anhydrous ammonia and petroleum tanks, we did not question whether the proposed references to API and NFPA standards would be suitable for both types of tanks. Now, however, in view of TFI's comment and having no information to the contrary, we are hesitant to impose on operators of anhydrous ammonia breakout tanks any of the proposed rules that we believe might not be wholly appropriate for such tanks. Therefore, we are adding a sentence to the new § 195.1(c) to exclude anhydrous ammonia breakout tanks from final §§ 195.132(b), 195.205(b), 195.242(c) and (d), 195.264(b) and (e), 195.307, 195.428(c) and (d), and 195.432(b) and (c). At the same time, we will continue to monitor the safety performance of anhydrous ammonia breakout tanks and

take any further rulemaking action that is warranted, including referencing appropriate consensus standards.

Riveted and Bolted Tanks

EPA said the proposed rules do not sufficiently address problems on riveted and bolted tanks. These tanks, it said, are usually older and more susceptible to leaks and their bottoms require different inspection methods. API, however, pointed out that API Standard 653 covers the integrity maintenance of riveted tanks and specifically addresses older tanks. API also said most transportation tanks are welded and that bolted tanks are used in the exploration and production sector of the oil industry.

Besides API Standard 653, we believe several other consensus standards we proposed to reference apply to riveted tanks: API Recommended Practice 651, API Recommended Practice 652, API Recommended Practice 2003, API Recommended Practice 2350, API Standard 2000, API Publication 2026, and NFPA 30. Moreover, our safety data do not indicate that additional requirements are needed to combat leakage problems in older riveted tanks. For example, in its breakout tank report (discussed in the NPRM), the Texas Transportation Institute found that the general condition and appearance of the older riveted tanks it investigated were excellent. Although EPA correctly observed that riveted tank inspection differs from welded tank inspection, the NPRM did not propose rules for the methods of inspecting either welded or riveted tanks.

As to bolted tanks, our experience shows that these tanks are used primarily to store field production, and few, if any, of these tanks are used as breakout tanks subject to Part 195. Any bolted breakout tanks that do exist are covered by existing Part 195 requirements and are subject to inspection by federal and state pipeline safety enforcement personnel.

Operator Error

EPA stated that API standards do not address the problem of operator error, which accounts for a large percentage of pipeline spills. EPA suggested operator personnel should receive proper training, and after a spill, operators should review their training practices to see if changes are needed to prevent spills from recurrence based on operator error.

The NPRM did not propose training requirements because existing § 195.403 requires breakout tank operators to have a detailed training program for operating and maintenance personnel. Under this program, operators periodically review personnel performances and change the training as necessary to make it effective. In addition, in a separate proceeding, we have proposed new rules on the qualification of personnel to perform safety-related tasks (63 FR 57269; Oct. 27, 1998). We intend to issue a final rule on the qualification of personnel in the near future.

Section 195.205(b)(2)

In this section, we proposed that the repair, alteration, and reconstruction of breakout tanks built to API Specification 12F, API Standard 620, or API Standard 2510 be done in accordance with those respective standards. API commented that because API Standard 2510 applies to the design and construction of new tanks and has limited application to existing tanks, the reference to API Standard 2510 may be confusing. It suggested that the references in proposed § 195.205(b)(2) be stated more specifically to refer to the ''design, welding, examination, and material requirements of those respective standards.'' API also suggested that we add a sentence to proposed § 195.205(b)(2) to refer to API 510, ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration,'' for regulation on the repairs and alteration of tanks built to API Standard 2510.

Based on this comment, final § 195.205(b)(2) contains more specific references. And we have added a new paragraph under § 195.205(b)(3) regarding use of API 510 for repairs, alteration and reconstruction of high pressure tanks.

Section 195.264

We proposed to increase the present requirements of § 195.264 related to spill containment and relief venting. In proposed § 195.264(b)(1)(i), we referenced section 2–3.4.3 of NFPA 30 for secondary containment by impounding around a breakout tank. But we proposed to apply the specific requirements in section 2–3.4.3 concerning ''Class I [flammable] liquids'' to all ''hazardous liquids'' subject to Part 195. API objected to this proposed expansion of the Class I-specific requirements as inappropriate because these requirements are long-standing, well understood, and technically sound. NFPA pointed out that our Class I proposal created the false impression that section 2–3.4.3 of NFPA 30 is limited to Class I liquids, when, in fact, other hazardous liquids are covered as well. Upon reconsideration, we believe the proposed expansion of specific Class I liquid requirements was not consistent with the intent of the NPRM to require the industry to follow consensus standards. Therefore, we have not adopted our proposal replacing ''hazardous liquids'' in the final rule.

API also objected to the term ''secondary containment'' in proposed § 195.264(b). It said section 2–3.4.3 of NFPA 30 applies to impoundment, which better describes the function of diked areas around tanks. We agree and have substituted ''impoundment'' for ''secondary containment'' in the final rule.

NFPA suggested we reference additional sections of NFPA 30 in § 195.264: section 2–9.3 for security, and sections 2–3.5 and 2-3.6 for normal and emergency venting. The latter two sections, NFPA said, would eliminate the need for references to API documents in proposed § 195.264(e)(1)-(3). Since the NPRM did not propose to substantively change the existing breakout tank security requirement (§ 195.264(b)), we did not consider referencing section 2–9.3 of NFPA 30 in the final rule. Further, even though the suggested NFPA 30 sections may yield comparable results, in the absence of negative comments about the proposed references to API documents for normal and emergency venting, we are leaving these API references in the final rule.

EPA described what it called ''inherent weaknesses'' in the spill control provisions of NFPA 30. Specifically, EPA said NFPA 30 limits dike height, does not require free board space for precipitation, and allows alternatives that can compromise environmental protection. It also noted the lack of requirements for certification by a professional engineer, spill history records, predictions of spill rate and direction, inspection of impoundment, and response plans with commitment of personnel and equipment. EPA suggested we adopt its SPCC regulations instead of the NFPA requirements. Doing so, EPA said, would result in better environmental protection. But API contended the SPCC regulation is inappropriate for pipeline breakout tanks because it addresses entire plants and contains specific requirements for non-transportation facilities.

The weaknesses EPA found with the spill control provisions of NFPA 30 either do not exist or are mitigated by other considerations. Section 2–3.4.3(f) allows dikes of any height that provide normal access to the enclosure. The need for free board must be considered as required by appendix A–2–3.4.3(b). Although section 1–4 permits equivalent alternatives, as we discussed above under the ''Engineering

Judgment'' heading, this provision is not included in the parts of NFPA 30 incorporated by reference in § 195.264. None of the Part 195 rules require operators to obtain professional engineer certifications to demonstrate compliance, and we do not consider the lack of such a requirement in NFPA 30 to be a shortcoming in the regulation of spill control. Breakout tank operators have to keep records of spills under § 195.404(b), and § 195.402(c)(4) requires operators to consider potential spill characteristics in determining which facilities may require immediate response in the event of a failure or malfunction. The construction of impoundment must be inspected as required by § 195.204, and spill response plans backed by committed resources are required by § 195.402(e) and 49 CFR Part 194. In conclusion, we are including the proposed references to NFPA 30 in final § 195.264. As we said above in the discussion on overlapping federal regulation, because the final rules are directed primarily at preventing breakout tank accidents, we do not think the SPCC regulations would result in better environmental protection.

Section 195.307

API suggested we take the word ''pressure'' out of the title of proposed § 195.307, ''Pressure testing breakout tanks.'' API said not all testing under the section is pressure testing.

This comment probably arose because pressure testing is mentioned only in paragraph (e), while paragraphs (a)-(d) deal with pneumatic or hydrostatic testing. However, since pneumatic and hydrostatic testing are forms of pressure testing, we have kept the proposed title in the final rule.

Section 195.405

We proposed, under § 195.405(b), to reduce the hazards associated with maintenance of tank floating roofs by requiring operators to consider adding the safety practices of API Publication 2026 to their operation and maintenance manuals. AMOCO contended this proposal was unnecessary because it duplicates similar requirements in the Occupational Safety and Health Administration's confined space regulation (29 CFR 1910.146).

We considered this comment and decided to adopt the proposed rule as final. OSHA's regulation has general application to a variety of confined spaces, but API Publication 2026 deals specifically with entering and exiting floating roofs. Also, if AMOCO's assessment is correct, operators's existing procedures should already satisfy the guidelines in API Publication 2026. Moreover, as 29 CFR 1910.5(b) indicates, OSHA's confined space requirements do not apply to employee working conditions for which another federal agency prescribes regulations affecting occupational safety or health. This provision reduces the potential for problems to result from duplication of any OSHA requirement in 29 CFR Part 1910.

Section 195.428 (c)–(e)

We proposed, under § 195.428(c) and (d), that within 18 months of the final rule certain tanks have overfill protection systems that meet API Recommended Practice 2350, or meet API Standard 2510 if the tank was built to that standard. API, AMOCO, and TEPPCO argued that we should not require existing tanks to have these systems. It said applying the proposed rule retroactively to tanks without such systems would require significant expenditures for conduit, wiring, possibly degassing, and temporary removal of the tank from service.

For these same reasons, we did not intend to apply proposed § 195.428(c) and (d) retroactively. Consistent with our statement that the proposed rules would result in minimal or no cost for operators (63 FR 27908), we intended that operators install overfill protection systems as they customarily do: when constructing new tanks or significantly altering existing tanks. Therefore, the final rule clarifies this limited application, which begins 18 months from today. In addition, for clarity and simplification, we have combined proposed paragraphs (c) and (d) into final paragraph (c). Final paragraph (d) restates proposed paragraph (e) concerning inspecting and testing overfill protection systems.

Section 195.432

In this section we proposed that starting 18 months after the final rule is published, the annual inspection now required by existing § 195.432 for all breakout tanks include, for carbon and low alloy steel, welded or riveted, non-refrigerated tanks, an integrity inspection under section 4 of API Standard 653.

API, AMOCO, and EPA noted a potential conflict between the annual inspection deadline and the different intervals that section 4 of API Standard 653 provides for various types of inspections. Of particular concern were the inspection intervals based on corrosion rate, which in some cases could be up to 20 years. API recommended that we drop the annual inspection requirement and merely require operators to inspect breakout tanks according to section 4 of API Standard 653. EPA also questioned the annual inspection requirement because it does not define the required inspections.

We agree that the existing and proposed requirements could create a conflict of inspection intervals. So final § 195.432(a) includes an exception for tanks that are subject to the other inspection requirements of § 195.432. We did not eliminate the existing annual inspection requirement as API suggested, because it provides for maintenance inspection of breakout tanks that are not subject to the new integrity inspection requirements, such as anhydrous ammonia tanks and non-steel tanks.

API also pointed out that some tank bottoms cannot be inspected under API Standard 653 because the steel bottom has been repaired by a concrete cover. API recommended that in cases like this we allow operators to use an alternative method, such as a risk-based analysis, to assess bottom integrity. Under final § 195.432(b), operators must inspect the integrity of atmospheric and low-pressure tanks according to section 4 of API Standard 653. However, in view of API's comment, the final rule allows an operator to use an assessment technique included in its operations and maintenance manual for tank bottoms to which access is prevented by structural conditions.

In another comment on proposed § 195.432, API suggested that we incorporate by reference API 510, ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration,'' as the inspection standard for high-pressure tanks built to API Standard 2510. API said API 510 is the appropriate inspection standard for such tanks. We agree that this standard is more appropriate than API Standard 653 for such tanks and it is incorporated by reference in final § 195.432(c).

The references to consensus standards do not include parts of those standards that are not directly related to carrying out inspections. For example, parts of section 4 of API Standard 653 concerning records, reports, and inspector qualifications (Sections 4.8–4.10) are not incorporated by reference because these parts do not govern the process of inspection. In addition, § 195.404(c)(3) requires inspection records. And, as previously mentioned, personnel qualification is covered by § 195.403 and is the subject of rules proposed in Docket No. RSPA–98–3783 (63 FR 57269; Oct. 27, 1998).

AMOCO was concerned about the application of inspection intervals to

tanks already in compliance with the new integrity inspection requirements and tanks not in compliance. To clarify this matter, final § 195.432(d) provides that a particular interval begins on the date this final rule document takes effect, May 3, 1999, or the operator's last recorded date of the inspection, whichever is earlier. We dropped the proposed 18-month compliance time from the final § 195.432 because we considered it unnecessary in view of the inspection intervals specified by the referenced standards.

Advisory Committee

- On May 6, 1998, in Washington, DC, we briefed the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) about this rule. This committee voted to accept the NPRM provided that we consider adopting API Publication 340.
- On November 6, 1998, in Washington, DC, we briefed THLPSSC about comments received and changes to expect in the final rule. Also at this time, we reviewed a five page report on API publication 340 prepared by SPEC Consulting Services for API's Health and Environment Affairs Department. This report was sent to the THLPSSC committee on May 14, 1998. This report concluded that API publication 340 need not be adopted in this rulemaking. We agreed because, (1) the scope of API publication 340 is too broad for this rulemaking; (2) four API standards referenced in API 340 are already adopted in this rulemaking; (3) this rulemaking goes beyond API Publication 340, and adopts six other API consensus standards. The THLPSSC agreed with our conclusion. A copy of this report is in the docket.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation (DOT) does not consider this action to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993) and this rule was not reviewed by the Office of Management and Budget. DOT does not consider this action significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979).

This rule would amend the regulations for breakout tanks to include the incorporation by reference of certain of the latest consensus standards for above ground storage tanks. The adoption of consensus standards is consistent with the President's goal of regulatory reinvention and improvement of customer service to the American people. There is minimal or no cost for operators of breakout tanks to comply with this rule because these consensus standards have been developed and implemented by industry organizations to ensure the safety of above ground petroleum storage tanks.

The standards for steel storage tanks were specifically developed by the API. API is the major petroleum industry trade organization and many of its members are operators of petroleum pipelines with tank farms. Additionally, the standard for secondary containment is taken from an NFPA code that is a widely used consensus standard for the design of diking (containment by impounding) for above ground storage tanks. The NFPA is an association with a membership of more than 67,000 individuals and over 100 national trade and professional organizations. Its mission is to reduce the burden of fire on the quality of life by advocating scientifically based consensus codes and standards, research, and education for fire and safety issues.

The operators of breakout tanks storing hazardous liquids are very familiar with these API storage tank and NFPA diking standards because they have been extensively implemented at pipeline terminals throughout the United States. Conversations with an industry storage tank organization representing medium and smaller operators of breakout tanks confirm that most of their members are already complying with the tank standards. Because the economic impact of this rule is minimal, the incorporation by reference of these industry standards does not warrant preparation of a Regulatory Evaluation.

For several years, OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Standards'', encouraged, but did not require, agencies to participate in consensus standards bodies and to adopt voluntary consensus standards whenever possible. The National Technology Transfer and Advancement Act of 1995 (NTTAA, Pub. L. 104–113) codified and expanded the participation and reporting requirement of OMB Circular A–119. Federal agencies and departments are now required to use technical standards that are developed and adopted by voluntary consensus bodies, where practicable. RSPA prescribed API and NFPA standards for petroleum storage tanks meets the goals and requirements set forth in both OMB Circular A–119 and NTTAA.

B. Regulatory Flexibility Act

As discussed above, RSPA is incorporating consensus standards that were developed and published by authoritative organizations associated with the petroleum industry. Consequently, these safety standards are well known and have been implemented by operators of aboveground storage tanks at hazardous liquid pipeline terminals throughout the United States. RSPA has had conversations with an operators' association representing these tank farms and with other persons and those parties do not expect this rule to have a significant economic impact on the smaller operators of breakout tanks. Moreover, in the event that some operators of breakout tanks have not yet implemented all the safety-related items in these consensus standards, the regulations prescribed in this final rule would allow operators 18 months for compliance after the date of publication of the final rule.

Therefore, based on the facts available which indicate the anticipated minimal impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

RSPA, in the proposed rule, had requested comments from small entities which might be impacted by this rule. We received one comment from an association which includes small operators. This association stated that most, if not all, members already adhere to the consensus tank standards adopted by this rulemaking. This supports our earlier conclusion that this rule will have no significant impact on substantial number of small entities.

C. Executive Order 126120

This rule will not have substantial direct effects on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with the Executive Order 12612 (52 FR 41685; Oct. 30, 1987), RSPA has determined that the action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Executive Order 13084

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination

with Indian Tribal Governments''). Because this rule would not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

E. Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of over $100 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

The API Standard 653 includes sample checklists, provided for the operators' periodic inspection of welded or riveted, non-refrigerated, atmospheric pressure, aboveground steel storage tanks. The checklists identify the tank components and auxiliary items that should be considered for inspection and provide blank spaces for insertion of the inspection date and notation of the inspector's comments (if any). The use of the checklists improves the effectiveness and minimizes the paperwork burden associated with the existing inspection requirements in 49 CFR 195.432. This API standard has been published for several years and during that time it has been available to all operators of petroleum storage tanks (i.e. refinery, marketing, production and pipeline).

For the API Recommended Practices referred to in this rulemaking, it is stated that the operator would be expected to follow the provisions unless the operator notes in the procedural manual the reasons why compliance with all or certain provisions is not necessary for the safety of a particular breakout tank or tanks. Each operator's procedural manual already requires the inclusion and updating of similar safety-related procedures and practices, so that such annotation is consistent with the long standing function of the procedural manual. Moreover, most operators already follow the API Recommended Practices that are prescribed for adoption and would not need to make such an annotation in the procedural manual.

Therefore, there is little or no additional burden and no paperwork analysis is required for this rule.

G. National Environmental Policy Act

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This rule does not specify business process changes or require modifications to computer systems. Because this rule apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements in this rule.

List of Subjects in 49 CFR Part 195

Incorporation by reference, Breakout tanks, Hazardous liquids, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.1(c) is revised to read as follows:

§ 195.1 Applicability.

* * * * *

(c) Breakout tanks subject to this part must comply with requirements that apply specifically to breakout tanks and, to the extent applicable, with requirements that apply to pipeline systems and pipeline facilities. If a conflict exists between a requirement that applies specifically to breakout tanks and a requirement that applies to pipeline systems or pipeline facilities, the requirement that applies specifically to breakout tanks prevails. Anhydrous ammonia breakout tanks need not comply with §§ 195.132(b), 195.205(b), 195.242 (c) and (d), 195.264 (b) and (e), 195.307, 195.428 (c) and (d), and 195.432 (b) and (c).

3. Section 195.3 is amended by adding paragraph (b)(7), by revising the introductory text of paragraph (c), by revising paragraphs (c)(2) and (c)(3)(v), and by adding paragraph (c)(6), to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(b) * * *

(7) National Fire Protection Association (NFPA), 11 Tracy Drive, Avon, MA 02322.

(c) The full titles of publications incorporated by reference wholly or partially in this part are as follows. Numbers in parentheses indicate applicable editions:

* * * * *

(2) American Petroleum Institute (API):

(i) API 510 ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration'' (8th edition, June 1997).

(ii) API Publication 2026 ''Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service'' (2nd edition, April 1998).

(iii) API Recommended Practice 651 ''Cathodic Protection of Aboveground Petroleum Storage Tanks'' (2nd edition, December 1997).

(iv) API Recommended Practice 652 ''Lining of Aboveground Petroleum Storage Tank Bottoms'' (2nd edition, December 1997).

(v) API Recommended Practice 2003 ''Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents'' (6th edition, December 1998).

(vi) API Recommended Practice 2350 ''Overfill Protection for Storage Tanks In Petroleum Facilities'' (2nd edition, January 1996).

(vii) API Specification 5L ''Specification for Line Pipe'' (41st edition, 1995).

(viii) API Specification 6D ''Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)'' (21st edition, 1994).

(ix) API Specification 12F ''Specification for Shop Welded Tanks for Storage of Production Liquids'' (11th edition, November 1994).

(x) API Standard 1104 ''Welding Pipelines and Related Facilities'' (18th edition, 1994).

(xi) API Standard 620 ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' (9th edition, February 1996, Including Addenda 1 and 2).

(xii) API Standard 650 ''Welded Steel Tanks for Oil Storage'' (9th edition, July 1993 (Including Addenda 1 through 4).

(xiii) API Standard 653 ''Tank Inspection, Repair, Alteration, and Reconstruction'' (2nd edition, December 1995, including Addenda 1, December 1996).

(xiv) API Standard 2000 ''Venting Atmospheric and Low-Pressure Storage Tanks'' (4th edition, September 1992).

(xv) API Standard 2510 ''Design and Construction of LPG Installations'' (7th edition, May 1995).

(3) * * *

(v) ASME Boiler and Pressure Vessel Code, Section VIII ''Pressure Vessels,'' Divisions 1 and 2 (1995 edition with 1995 Addenda).

* * * * *

(6) National Fire Protection Association (NFPA):

(i) ANSI/NFPA 30 ''Flammable and Combustible Liquids Code,'' (1996).

(ii) [Reserved]

4. Section 195.132 is revised to read as follows:

§ 195.132 Design and construction of aboveground breakout tanks.

(a) Each aboveground breakout tank must be designed and constructed to withstand the internal pressure produced by the hazardous liquid to be stored therein and any anticipated external loads.

(b) For aboveground breakout tanks first placed in service after October 2, 2000, compliance with paragraph (a) of this section requires one of the following:

(1) Shop-fabricated, vertical, cylindrical, closed top, welded steel tanks with nominal capacities of 90 to 750 barrels (14.3 to 119.2 m^3) and with internal vapor space pressures that are approximately atmospheric must be designed and constructed in accordance with API Specification 12F.

(2) Welded, low-pressure (i.e., internal vapor space pressure not greater than 15 psig (103.4 kPa)), carbon steel tanks that have wall shapes that can be generated by a single vertical axis of revolution must be designed and constructed in accordance with API Standard 620.

(3) Vertical, cylindrical, welded steel tanks with internal pressures at the tank top approximating atmospheric pressures (i.e., internal vapor space pressures not greater than 2.5 psig (17.2 kPa), or not greater than the pressure developed by the weight of the tank roof) must be designed and constructed in accordance with API Standard 650.

(4) High pressure steel tanks (i.e., internal gas or vapor space pressures greater than 15 psig (103.4 kPa)) with a nominal capacity of 2000 gallons (7571 liters) or more of liquefied petroleum gas (LPG) must be designed and constructed in accordance with API Standard 2510.

5. Section 195.205 is added to read as follows:

§ 195.205 Repair, alteration and reconstruction of aboveground breakout tanks that have been in service.

(a) Aboveground breakout tanks that have been repaired, altered, or reconstructed and returned to service must be capable of withstanding the internal pressure produced by the hazardous liquid to be stored therein and any anticipated external loads.

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the tanks specified:

(1) For tanks designed for approximately atmospheric pressure constructed of carbon and low alloy steel, welded or riveted, and non-refrigerated and tanks built to API Standard 650 or its predecessor Standard 12C, repair, alteration, and reconstruction must be in accordance with API Standard 653.

(2) For tanks built to API Specification 12F or API Standard 620, the repair, alteration, and reconstruction must be in accordance with the design, welding, examination, and material requirements of those respective standards.

(3) For high pressure tanks built to API Standard 2510, repairs, alterations, and reconstruction must be in accordance with API 510.

6. Section 195.242 is amended by adding paragraphs (c) and (d) to read as follows:

§ 195.242 Cathodic protection system.

* * * * *

(c) For the bottoms of aboveground breakout tanks with greater than 500 barrels (79.5 m^3) capacity built to API Specification 12F, API Standard 620, or API Standard 650 (or its predecessor Standard 12C), the installation of a cathodic protection system under paragraph (a) of this section after October 2, 2000, must be in accordance with API Recommended Practice 651, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 651 is not necessary for the safety of a particular breakout tank.

(d) For the internal bottom of aboveground breakout tanks built to API Specification 12F, API Standard 620, or API Standard 650 (or its predecessor Standard 12C), the installation of a tank bottom lining after October 2, 2000, must be in accordance with API Recommended Practice 652, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 652 is not necessary for the safety of a particular breakout tank.

7. Section 195.264 is revised to read as follows:

§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

(a) A means must be provided for containing hazardous liquids in the event of spillage or failure of an aboveground breakout tank.

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:

(1) For tanks built to API Specification 12F, API Standard 620, and others (such as API Standard 650 or its predecessor Standard 12C), the installation of impoundment must be in accordance with the following sections of NFPA 30:

(i) Impoundment around a breakout tank must be installed in accordance with Section 2–3.4.3; and

(ii) Impoundment by drainage to a remote impounding area must be installed in accordance with Section 2–3.4.2.

(2) For tanks built to API Standard 2510, the installation of impoundment must be in accordance with Section 3 or 9 of API Standard 2510.

(c) Aboveground breakout tank areas must be adequately protected against unauthorized entry.

(d) Normal/emergency relief venting must be provided for each atmospheric pressure breakout tank. Pressure/vacuum-relieving devices must be provided for each low-pressure and high-pressure breakout tank.

(e) For normal/emergency relief venting and pressure/vacuum-relieving devices installed on aboveground breakout tanks after October 2, 2000, compliance with paragraph (d) of this section requires the following for the tanks specified:

(1) Normal/emergency relief venting installed on atmospheric pressure tanks built to API Specification 12F must be in accordance with Section 4, and Appendices B and C, of API Specification 12F.

(2) Normal/emergency relief venting installed on atmospheric pressure tanks (such as those built to API Standard 650 or its predecessor Standard 12C) must be in accordance with API Standard 2000.

(3) Pressure-relieving and emergency vacuum-relieving devices installed on low pressure tanks built to API Standard 620 must be in accordance with Section 7 of API Standard 620 and its references to the normal and emergency venting requirements in API Standard 2000.

(4) Pressure and vacuum-relieving devices installed on high pressure tanks built to API Standard 2510 must be in accordance with Sections 5 or 9 of API Standard 2510.

8. Section 195.307 is added to read as follows:

§ 195.307 Pressure testing aboveground breakout tanks.

(a) For aboveground breakout tanks built to API Specification 12F and first placed in service after October 2, 2000, pneumatic testing must be in accordance with section 5.3 of API Specification 12F.

(b) For aboveground breakout tanks built to API Standard 620 and first placed in service after October 2, 2000, hydrostatic and pneumatic testing must be in accordance with section 5.18 of API Standard 620.

(c) For aboveground breakout tanks built to API Standard 650 and first placed in service after October 2, 2000, hydrostatic and pneumatic testing must be in accordance with section 5.3 of API Standard 650.

(d) For aboveground atmospheric pressure breakout tanks constructed of carbon and low alloy steel, welded or riveted, and non-refrigerated and tanks built to API Standard 650 or its predecessor Standard 12C that are returned to service after October 2, 2000, the necessity for the hydrostatic testing of repair, alteration, and reconstruction is covered in section 10.3 of API Standard 653.

(e) For aboveground breakout tanks built to API Standard 2510 and first placed in service after October 2, 2000, pressure testing must be in accordance with ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 or 2.

9. Section 195.405 is added to read as follows:

§ 195.405 Protection against ignitions and safe access/egress involving floating roofs.

(a) After October 2, 2000, protection provided against ignitions arising out of static electricity, lightning, and stray currents during operation and maintenance activities involving aboveground breakout tanks must be in accordance with API Recommended Practice 2003, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 2003 is not necessary for the safety of a particular breakout tank.

(b) The hazards associated with access/egress onto floating roofs of in-service aboveground breakout tanks to perform inspection, service, maintenance or repair activities (other than specified general considerations, specified routine tasks or entering tanks removed from service for cleaning) are addressed in API Publication 2026. After October 2, 2000, the operator must review and consider the potentially hazardous conditions, safety practices and procedures in API Publication 2026 for inclusion in the procedure manual (§ 195.402(c)).

10. Section 195.416 (j) is added to read as follows:

§ 195.416 External corrosion control.

* * * * *

(j) For aboveground breakout tanks where corrosion of the tank bottom is controlled by a cathodic protection system, the cathodic protection system must be inspected to ensure it is operated and maintained in accordance with API Recommended Practice 651, unless the operator notes in the procedure manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 651 is not necessary for the safety of a particular breakout tank.

11. Section 195.428 is amended by revising the title and by adding paragraphs (c) and (d) to read as follows:

§ 195.428 Overpressure safety devices and overfill protection systems.

* * * * *

(c) Aboveground breakout tanks that are constructed or significantly altered according to API Standard 2510 after October 2, 2000, must have an overfill protection system installed according to section 5.1.2 of API Standard 2510. Other aboveground breakout tanks with 600 gallons (2271 liters) or more of storage capacity that are constructed or significantly altered after October 2, 2000, must have an overfill protection system installed according to API Recommended Practice 2350. However, operators need not comply with any part of API Recommended Practice 2350 for a particular breakout tank if the operator notes in the manual required by § 195.402 why compliance with that part is not necessary for safety of the tank.

(d) After October 2, 2000, the requirements of paragraphs (a) and (b) of this section for inspection and testing of pressure control equipment apply to the inspection and testing of overfill protection systems.

12. Section 195.432 is revised to read as follows:

§ 195.432 Inspection of in-service breakout tanks.

(a) Except for breakout tanks inspected under paragraphs (b) and (c) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, inspect each in-service breakout tank.

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

(c) Each operator shall inspect the physical integrity of in-service steel aboveground breakout tanks built to API Standard 2510 according to section 6 of API 510.

(d) The intervals of inspection specified by documents referenced in paragraphs (b) and (c) of this section begin on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

Issued in Washington, D.C. on March 22, 1999.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–7442 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 64, No. 63
Friday, April 2, 1999

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–99–001]

RIN 0581–AB57

Revision of User Fees for 1999 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to raise user fees for cotton producers for 1999 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1998 user fee for this classification service was $1.30 per bale. This proposal would raise the fee for the 1999 crop to $1.35 per bale. The proposed increase in fees resulted from the significant drop in cotton production for the 1998 crop. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

DATES: Comments must be received by May 3, 1999.

ADDRESSES: Comments and inquiries should be addressed to, Cotton Programs, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposal on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). It has been determined that the implementation of this proposed rule would not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) The fee increase reflects a very small increase in the cost-per-unit currently borne by those entities utilizing the services (the 1998 user fee for classification services was $1.30 per bale; the fee for the 1999 crop would be increased to $1.35 per bale; the 1999 crop is estimated at 16,810,410 bales);

(2) The cost reduction will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1998 crop, 13,467,012 bales were classed out of 13,790,000 bales produced.

(4) Based on the average price paid to growers for cotton from the 1997 crop of 65.2 cents per pound, 500 pound bales of cotton are worth an average of $326.00 each. The proposed user fee for classification services, $1.35 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1999, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.30 per bale during the 1998 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Pub. L. 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, supervision, and development and maintenance of cotton standards.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.35 per bale during the 1999 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1998. Therefore, the 1999 producer's user fee for classification service is based on the 1998 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Pub. L. 102–237. The 1998 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.12 per bale. A one percent, or two cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.12 would result in a 1999 base fee of $2.14

per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1999 crop is estimated at 16,810,410 bales. The 1999 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 32 cents per bale reduction and was subtracted from the 1999 base fee of $2.14 per bale, resulting in a fee of $1.82 per bale.

With a fee of $1.82 per bale, the projected operating reserve would be 46.66 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.82 must be reduced by 47 cents per bale, to $1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1999 season fee at $1.35 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the increase in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10 cents per card in § 28.910(a) to reflect the costs of providing this service. Requests for punch card classification data represented only 0.7 percent of the total bales classed from the 1998 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at five cents per bale, and it would be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be increased from $1.30 per bale to $1.35 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A thirty-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 1999, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[Amended]

1. The authority citation for 7 CFR part 28, subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.35 per bale.

* * * * *

Dated: March 30, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–8160 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA64

Regulations Issued Under the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed Rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to amend existing scales and weighing regulations under the Packers and Stockyards (P&S) Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The current regulations do not contain any requirements regarding the weighing of feed although, in some circumstances, feed weight affects payment or settlement to livestock growers and poultry growers. The proposed amendment to the current regulations will provide livestock growers and poultry growers with a measure of assurance that feed is accurately weighed or reasonably determined and feed weight is properly documented whenever feed weight affects payment or settlement to livestock growers or poultry growers.

DATES: Comments must be received on or before June 1, 1999.

ADDRESSES: Comments may be mailed to the U.S. Department of Agriculture, Deputy Administrator, Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Programs, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641; Fax: 202–205–3941; E-mail: PSP.GIPSA@usda.gov. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator, Packers and Stockyards Programs.

FOR FURTHER INFORMATION CONTACT: Michael Caughlin, Director, Office of Policy/Litigation Support, (202) 720–6951.

SUPPLEMENTARY INFORMATION: GIPSA is proposing to amend existing scales and weighing regulations under the P&S Act to include requirements regarding the weighing of feed when the weight of feed is a factor in determining payment or settlement to livestock growers and

poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

In February 1997, GIPSA issued an Advance Notice of Proposed Rulemaking (ANPRM) (62 FR 5935–37) soliciting comments from poultry growers, integrators, and other interested parties on the need for and the possible wording of regulations regarding comparison contracts, feed weighing procedures, and live poultry weighing.[1] GIPSA received 3,415 comments, of which 1,129 expressed concerns regarding feed weighing procedures including concerns that feed is not properly weighed; the weight should be printed electronically and not handwritten; the truck delivering the feed should be sealed to secure each individual lot of feed; and excess feed that is returned should be reasonably determined and properly documented to credit the grower for the unused feed.

Many of those comments also suggested that feed scales should be better regulated by requiring semiannual testing by competent testing agencies or companies as is currently required for scales used to weigh live poultry. In addition, GIPSA received comments prior to initiating this rulemaking process from livestock growers and continues to receive complaints that indicate that these same concerns exist in the livestock industry. Furthermore, GIPSA continues to receive complaints from individual livestock growers and poultry growers concerning feed weights both with respect to feed deliveries and excess feed picked up or returned at the end of the growing cycle.

This proposed rulemaking would address the concerns of livestock growers and poultry growers by requiring those firms supplying feed to growers, either directly or indirectly, to weigh feed accurately, reasonably determine the weight of excess feed and properly account for feed weight when the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement. ''Growing arrangements'' with respect to poultry means ''growing arrangements'' as defined in section 2(a)(9) of the Act (7 U.S.C. 183(a)(9)). The term ''livestock growing arrangement'' means any growing or feeding arrangement under which a livestock grower raises and cares for livestock for delivery, in accord with a market agency, dealer, or packer's instructions. Feed weight is reasonably determined when the manner of determining the feed weight is mutually acceptable to both the feed provider and the livestock grower or poultry grower.

Extending existing regulations governing weighing practices and technical requirements for scales to include weighing feed will result in uniform requirements for weighing that affect payment and settlement to livestock growers and poultry growers. Since feed weights are an integral part of the payment or settlement calculation in many livestock and poultry growing arrangements, basic scale requirements and weighing procedures are critical to assure payment or settlement based on accurate weights. Most States do not consider feed scales as commercial devices unless the feed is sold directly to the general public. Therefore, feed scales that would fall under the purview of this proposed rule, which are not generally used to sell feed directly to the general public, are usually not required to be tested by State weights and measures officials. Thus, State regulatory oversight of the weighing of feed delivered to livestock growers or poultry growers is not adequate to address the concerns of these industries.

This proposed rule would modify §§ 201.49, 201.71, 201.72, and 201.73 of the regulations to include requirements regarding the weighing of feed whenever feed weight is used as a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The proposed modifications in these sections will make the requirements for feed weighing consistent with the requirements for the weighing of livestock and live poultry.

Specifically, § 201.49 would be amended to include a paragraph (c) which would require a scale ticket be issued with specified information pertaining to the weight and identification of the lot of feed consistent with the other scale ticket requirements included in this section. Section 201.71 would be amended to require that scales weighing feed: (1) Be installed, maintained, operated and tested in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, 1996 edition, entitled ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices'; (2) be equipped with a printing device used for recording weight; (3) be of sufficient length and capacity to weigh an entire load when feed is weighed on a vehicle scale; and (4) be found, upon test and inspection, to be in a condition to provide accurate weight. Section 201.72 would be amended to include scales used to weigh feed in the requirement that scales be tested twice during each calendar year at intervals of approximately 6 months by competent persons and that copies of test reports be furnished to the P&S Programs regional office. Section 201.73 would be amended to require that scales used to weigh feed be operated by qualified persons in accordance with the regulations.

Section 201.55 would be amended to require that the actual weight of feed be shown on scale tickets or otherwise be explained and that the weight of picked up or returned excess feed be reasonably determined, documented and credited back to the livestock grower or poultry grower. Feed weight is reasonably determined when the manner of determining the feed weight is mutually acceptable to both the feed provider and the livestock grower or poultry grower.

The proposed rulemaking should not impose any significant additional regulatory burden on the affected industries since the feed scales of many subject firms are routinely tested, whether by State weights and measures organizations or by private scale companies as a normal business practice. Recordkeeping under the proposed regulations would impose little burden upon subject firms since a majority of the affected entities utilize adequate weighing and documentation procedures. Under current regulations, firms subject to the P&S Act are not required to file copies of their feed scale test reports with P&S, although the proposed regulations will require firms subject to the P&S Act to file copies of the scale test reports with the appropriate P&S regional office.

Executive Order 12866

This rule has been determined to be significant for the purpose of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This amendment will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

Effects on Small Entities

GIPSA proposes to amend §§ 201.49, 201.55, 201.71, 201.72, and 201.73 to include feed weighing when the weight of feed is a factor in determining payment or settlement to livestock

[1] Comments on the other two issues addressed by the ANPRM (comparison contracts and live poultry weighing) are still being analyzed by GIPSA.

growers or poultry growers. The additional information collection is required to provide such growers assurance that feed scales are being tested and maintained properly, that feed is accurately weighed or reasonably determined, and that recipients of feed are receiving proper and adequate documentation of the feed weight.

The economic impact of the proposed regulations will be minimal. Approximately 260 poultry integrators currently supply feed to poultry growers and an estimated 50 additional entities operating subject to the P&S Act currently supply feed to livestock growers where the weight of feed is an integral factor in determining payment or settlement to livestock growers or poultry growers. Most subject firms deliver feed directly from their own feed mills, but a few order feed from independent feed mills for delivery to livestock growers or poultry growers. In each case, subject firms would be responsible for ensuring that scales used to determine the weights of feed have a printing device and conform to the specifications of the NIST Handbook 44 (H–44), 1996 edition. Currently, most feed scales have a weight printing device and conform with H–44 requirements. Scale installation companies usually do not install a scale system that is not approved or appropriate for weighing feed under the proposed amended regulations. Therefore, we do not anticipate any significant economic impact.

Under the proposed regulation, subject firms would be required to test their scales twice a year and submit a copy of the test reports to the appropriate P&S regional office. Most entities currently have their scales tested at least twice a year either by State weights and measures officials or by private scale companies which would satisfy the semiannual testing requirement. Those entities not conducting two scale tests a year would be required to employ a scale company to test the scale a second time during the year or request a second test from the State. Feed manufacturers, as is customary in most industries dealing in bulk commodities, have their scales tested frequently to ensure accurate weights, prevent system malfunction, and avoid down time.

There would be a minimal recordkeeping burden on the industry to submit a copy of the scale test report, on a semiannual basis, to the P&S regional office. This burden would entail obtaining a copy of the scale test report, which is completed by either the State or private scale company as a matter of routine documentation, and mailing it to the P&S regional office. Many States and scale companies mail the copies of the scale test reports to the P&S regional office for the customer.

Compliance with the requirements for scale tickets is projected to cause minimal burden on the industry. Those companies that do not print a scale ticket for feed or that print scale tickets that do not include all the information proposed in the amendment would have to change their procedures to include the required information. However, the additional time to add the required information, such as truck or trailer numbers, grower's name, and whether the truck driver was on or off at the time of weighing, is insignificant.

In addition, subject firms would be required to retain weight records in accordance with the provisions of the proposed regulatory amendment. In general, this does not entail any retention burden beyond that of normal and customary business practices.

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule will affect entities in contractual relationships with livestock growers or poultry growers when those entities supply feed, either directly or indirectly, to livestock growers or poultry growers and the weight of the feed is a factor in payment or settlement to growers. Presently, most of the entities that will be affected by this proposed rule are poultry slaughterers and processors of chickens with more than 500 employees and thus do not meet the requirements for small entities as defined in Section 3 the Small Business Act (13 CFR part 121(3)). Even though there may be some affected entities that could be considered small entities, the proposed rule, in most cases, would not require any substantial incurrence of expense or change in the routine operations for entities of any size.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements in Part 201 have been previously approved by the Office of Management and Budget under control number 0580–0015. Currently, §§ 201.49 and 201.72 require, in brief, that: (1) Scale tickets with certain required information be retained with the accounting files, and (2) scale test reports be sent to the P&S regional office. The additional requirements proposed herein would require persons subject to the P&S Act, where the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers, to produce scale tickets in accordance with the same requirements that are imposed on those operating livestock, poultry, and monorail scales and to provide copies of scale test reports to the P&S regional office.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington , DC 20503. Please state that your comments refer to Regulations issued under the Packers and Stockyards Act, RIN 0580–AA64. Please send a copy of your comments to (1) Deputy Administrator, Packers and stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641; and (2) Clearance Officer, OCIO, USDA, Room 404–W, 1400 Independence Avenue, SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule. All comments will become a matter of public record.

The estimated 300 firms that will be affected by this proposed amendment are expected to spend an estimated 10 additional hours per year complying with the semiannual scale testing requirements and the routine completion of scale tickets, resulting in a total increase of 3,000 hours per year in the reporting burden of these firms. These estimates were derived from previously approved burden hours for the same regulatory report and recordkeeping requirements for weighing livestock and live poultry.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are required to comply, including through the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or forms of information technology.

Implementing this proposed rule would change burdens in the currently approved collection of information to:

Estimate of burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 8.5 hours per response.

Respondents: Livestock auction markets, livestock dealers, packer buyers, meat packers, and live poultry dealers.

Estimated annual number of responses per respondent: 3.2.

Estimated annual number of responses: 24,815.

Estimated total annual burden on respondents: 304,106.

The hours above (304,106) reflect the total burden hours for the current information collection in conjunction with the proposed amendment to the weighing regulations. The amended weighing regulation is calculated to add only an additional 3,000 burden hours.

Copies of this information collection can be obtained from Clearance Officer, OCIO, USDA, room 404–W, 1400 Independence Avenue, Washington, DC 20250.

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Trade practices

For the reasons set forth in the preamble, 9 CFR part 201 is amended to read as follows:

PART 201—[Amended]

1. The authority citation for Part 201 would be revised to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.22, 2.81.

2. Section 201.49 would be amended by revising the heading and adding paragraph (c) to read as follows:

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock, live poultry, and feed.

* * * * *

(c) *Feed.* (1) Whenever feed is weighed by or on behalf of a stockyard owner, market agency, dealer, packer, or live poultry dealer where the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower, a scale ticket shall be issued which shall show:

(i) The name of the agency performing the weighing service or the name and location of the firm responsible for supplying the feed;

(ii) The name and address of the livestock grower or poultry grower;

(ii) The name or initials or number of the person who weighed the feed, or if required by State law, the signature of the weigher;

(iv) The location of the scale;

(v) The gross weight, tare weight, and net weight of each lot assigned to an individual grower, if applicable;

(vi) The date and time gross weight and tare weight, if tare weight is applicable, are determined;

(vii) The identification of each lot assigned to an individual grower by vehicle or trailer compartment number and seal numbers, if applicable;

(viii) Whether the driver was on or off the truck at the time of weighing, if applicable; and

(ix) The license number or other identification numbers of the truck and trailer, if weighed together, or trailer if only the trailer is weighed, if applicable.

(2) Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be retained by the person subject to the P&S Act, and a second copy shall be furnished to the livestock grower or poultry grower.

(Approved by the Office of Management and Budget under control number 0580–0015)

3. Section 201.55 would be revised to read as follows:

§ 201.55 Purchases, sales, acquisitions, payments and settlements to be made on actual weights.

(a) Except as provided in paragraph (b) of this section, whenever livestock or live poultry is bought, sold, acquired, paid, or settled on a weight basis, or whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower by a stockyard owner, market agency, dealer, packer, or live poultry dealer, payment or settlement shall be on the basis of the actual weight of the livestock, live poultry, and/or feed shown on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued. Any adjustment to the actual weights shall be fully and accurately explained on the accountings, bills or statements issued, and records shall be maintained to support such adjustment.

(b) Every stockyard owner, market agency, dealer, packer, and live poultry dealer shall reasonably determine, document, and account for the weight of any feed that is picked up from or returned by a livestock grower or poultry grower whenever the weight of the feed is a factor in determining the payment or settlement due to such livestock grower or poultry grower.

(Approved by the Office of Management and Budget under control number 0580–0015)

4. Section 201.71 would be revised to read as follows:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement shall be installed, maintained, and operated to ensure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1996 edition of National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on January 11, 1989. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, N.W., Suite 700, Washington, DC 20408.

(b) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry or feed for the purpose of purchase, sale, acquisition, payment, or settlement of livestock or live poultry and all scales used for the purchase, sale, acquisition, payment, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall record weight values on a scale ticket or other document.

(c) All vehicle scales used to weigh livestock, live poultry or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry shall be of sufficient length and capacity to weigh the entire vehicle as a unit: Provided, That a trailer may be uncoupled from the tractor and weighed as a single unit.

(d) No scale shall be operated or used by any stockyard owner, market agency, dealer, packer, or live poultry dealer to

weigh livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry unless it has been found upon test and inspection, as specified in § 201.72, to be in a condition to give accurate weight. If a scale is inspected or tested and found to be in a condition to give incorrect or inaccurate weights or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and determined to meet all accuracy requirements specified in the regulations.

5. Section 201.72 would be revised to read as follows:

§ 201.72 Scales; testing of.

(a) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations at least twice during each calendar year at intervals of approximately 6 months. More frequent testing will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, livestock carcasses, live poultry or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry shall furnish reports of such tests and inspections on forms prescribed by the Administrator. The stockyard owner, market agency, dealer, packer or live poultry dealer shall retain one copy of the test and inspection report and shall file one copy with the P&S regional office for the region in which the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by an agency of a State or municipality or other governmental subdivision, the forms ordinarily used by such agency for reporting test and inspection of scales shall be accepted in lieu of the forms prescribed for this purpose by the Deputy Administrator if such forms contain substantially the same information.

(Approved by the Office of Management and Budget under control number 0580–0015)

6. Section 201.73 would be revised to read as follows:

§ 201.73 Scale operators to be qualified.

Stockyard owners, market agencies, dealers, packers, and live poultry dealers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses, or live poultry and they shall require such employees to operate the scales in accordance with the regulations.

Done at Washington, DC, this March 26, 1999.

Harold W. Davis,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–8068 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–EN–P

SMALL BUSINESS ADMINISTRATION

13 CFR part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to limit the fees that a Certified Development Company (CDC) can charge a Borrower or Third Party Lender in connection with the processing of a 504 financing to the 1.5 percent processing fee currently authorized by SBA regulations. SBA invites comment on this proposed change and the policies underlying the change.

DATES: Submit comments on or before May 3, 1999.

ADDRESSES: Comments should be mailed to Jane Palsgrove Butler, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael J. Dowd, 202–205–6660.

SUPPLEMENTARY INFORMATION: SBA proposes to delete § 120.926 (13 CFR 120.926) and amend § 120.971 (13 CFR 120.971) of its regulations. The proposed amendments would clarify SBA's policy prohibiting a CDC from charging a Borrower more than 1.5 percent of the net debenture proceeds for all services related to processing a 504 financing. SBA invites comment on this policy. In addition, SBA proposes to amend its regulations to prohibit a CDC from charging a Third Party Lender for any services related to the processing or packaging of a 504 financing. SBA also invites comment on this proposed policy change.

Before March 1, 1996, the fees that SBA permitted a CDC to charge a Borrower for services related to a 504 financing were contained in SBA's regulations, 13 CFR 108.503–6. In addition to a fee from the Borrower of up to 1.5 percent of the net debenture proceeds to cover CDC costs for loan packaging, processing, and non-legal staff functions, the regulations permitted a CDC to charge the Borrower or Third-Party Lender an additional fee of up to 1.5 percent of the third party financing for services actually rendered by the CDC under a written agreement.

On December 15, 1995, in response to directives from the President for Federal agencies to streamline their regulations, SBA published proposed regulations (60 FR 64356) which consolidated parts 108, 116, 120, 122, and 131 of its regulations into a revised part 120. Former § 108.503–6 (except paragraph (c)) became § 120.971 in the proposed regulations under the heading ''Post-closing fees paid by Borrower.'' Proposed § 120.971 listed the fees that a CDC could charge a Borrower in connection with a 504 financing. Paragraph 108.503–6(c) became paragraph 120.961(b) in the proposed regulations. Proposed paragraph 120.961(b) allowed CDCs to charge a ''finder's fee'' which either the Borrower or Third Party Lender could pay.

On January 31, 1996, SBA published final regulations in the **Federal Register** with an effective date of March 1, 1996 (61 FR 3226) (the ''new regulations''). The heading of § 120.971 was changed to ''Allowable fees paid by Borrower,'' but in all other respects remained as proposed. Proposed paragraph 120.961(b) became § 120.926 in the new regulations. It allowed CDCs to charge only the Third Party Lender, and allowed a CDC to receive that fee from the Third Party Lender if the CDC secured the lender for the Borrower under a written contract. Section 120.926 of the new regulations, specifically prohibited a CDC from obtaining that fee directly from the Borrower.

SBA now proposes to prohibit a CDC from charging a Borrower or a Third Party Lender a referral fee or *any* other fee related to processing or packaging a 504 financing other than the 1.5 percent processing fee a CDC may charge a Borrower pursuant to § 120.971, whatever the CDC may call the fee. Specifically named as prohibited are application fees, finder's fees, referral fees, packaging fees, and additional fees of any kind (''Additional Fees''),

although the proposed rule makes clear that this prohibition applies to any fee the CDC might charge to the Borrower, regardless of what it would be called.

SBA intends that Borrowers not pay Additional Fees either directly or indirectly. SBA believes that Third Party Lenders sometimes pass Additional Fees on to Borrowers in the form of higher interest rates, points, or other charges. SBA considers it good public policy to prohibit a CDC from directly charging a Borrower Additional Fees, or from charging a Third Party Lender Additional Fees which may get passed along to a Borrower, because SBA believes a finder's fee or referral fee is not necessary since there is an established Third Party Lender community readily available to potential 504 borrowers and CDCs.

When the program first began in 1980, it was sometimes difficult for CDCs to locate Third Party Lenders willing to participate in a new program. So, SBA permitted CDCs to charge Additional Fees under former § 108.503–6(c) for services rendered in connection with obtaining a Third Party Loan. Today most CDCs have developed working relationships with one or more lender(s) who regularly participate in 504 financings. In fact, in many instances, the Borrower goes first to a Third Party Lender who refers the Borrower to the CDC. On most other occasions, a CDC refers a Borrower to a Third Party Lender that has participated with the CDC in previous 504 financings; or rarely, a CDC will use a packager to obtain a Third Party Lender. However this Third Party financing is placed, SBA no longer believes that the effort necessary to get a Third Party Lender justifies allowing a CDC to charge a small business Borrower Additional Fees.

SBA believes the compensation for any actions a CDC performs in connection with the origination and processing of a 504 financing is adequately covered by the 1.5 percent processing fee permitted to be paid by a Borrower pursuant to § 120.971(a)(1). A 504 financing includes the CDC loan, Third Party Loan, and Borrower injection (see 13 CFR 120.801). A CDC cannot process a 504 financing unless there is a qualified Third Party Lender. The participation of a Third Party Lender is an integral part of a CDC's processing of a 504 financing. Without it, a 504 financing cannot occur. SBA concludes that a CDC should not receive an Additional Fee of any kind for any actions related to obtaining a Third Party Lender, or processing the Third Party Loan, because the fee a CDC receives under § 120.971(a)(1) covers those actions. Whether a Borrower pays an Additional Fee directly to a CDC or indirectly to a Third Party Lender in the form of higher interest rates, points, or other charges, the Borrower is essentially paying twice for the same services—the processing of its 504 financing. SBA believes that the fee a CDC may charge under § 120.971(a)(1) is the all-inclusive processing fee for a CDC and that this fee covers any services performed by the CDC related to the processing of a 504 financing.

SBA emphasizes that the proposed regulatory amendments would prevent a CDC from charging a Borrower or Third Party Lender *any* fees related to processing or packaging a 504 financing other than the 1.5 percent processing fee a CDC may charge a Borrower pursuant to § 120.971. For example, a CDC would not be able to receive fees from a Borrower or Third Party Lender for (1) referring a Borrower to a Third Party Lender (or the reverse); (2) referring a Borrower to a packager; or (3) helping to process the Third Party Loan.

Since it is proposing to prohibit Additional Fees, SBA proposes to delete § 120.926 in its entirety. As was the case prior to March 1, 1996, all fees which a CDC would be able to charge with respect to a 504 financing would be found in one section of SBA's regulations, § 120.971. SBA proposes to change the heading of § 120.971 to ''Fees Which a CDC May Charge,'' and to add the word ''only'' to § 120.971(a) to make clear that a CDC may charge a Borrower only the fees enumerated in that paragraph.

SBA invites comments on any aspect of these proposed regulations and on the underlying policies as discussed in this preamble. Specifically, SBA invites comment on (but not limited to) the following issues:

1. Whether the fees now permitted to be charged to the borrower, 1.5 percent of the net debenture proceeds, is adequate compensation for processing a 504 financing.

2. Whether a CDC should be able to charge either a Borrower or a Third Party Lender Additional Fees when the fees are clearly itemized and the fees are for special and non-routine work performed in connection with obtaining a Third Party Lender or processing a Third Party Loan.

3. Whether there is any need for a CDC to receive an Additional Fee for its efforts relating to the Third Party Loan in specific situations, such as in urban and rural areas, or with respect to the CDC's efforts to increase the number of loans to New Market small businesses.

4. Whether SBA should establish separate fee limitations depending on whether the CDC is a for-profit or a not-for-profit entity.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Last year, SBA made approximately four thousand 504 loans. Currently there are approximately 270 CDCs.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 2 of that Order.

List of Subjects in 13 CFR part 120

Loan programs—business, Small Businesses.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

§ 120.926 [Remove]

2. Remove § 120.926.

3. Amend § 120.971 to revise the heading, to revise paragraph (a), to redesignate paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively, and to add new paragraph (b) as follows:

§ 120.971 Fees a CDC may charge.

(a) *Fees a CDC may charge a Borrower.* A CDC may charge only the following fees to a Borrower:

* * * * *

(b) *Fees a CDC may charge a Third Party Lender.* None.

* * * * *

Dated: March 24, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–8148 Filed 4–1–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0583]

RIN 0910–AB16

Exports: Notification and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing new regulations that would establish the notification and recordkeeping requirements for persons exporting human drugs, biologics, devices, animal drugs, food, and cosmetics that may not be marketed or sold in the United States. These regulations would implement recent changes in the statutory requirements applicable to certain exports, and would also codify recordkeeping requirements for exports of products that cannot be marketed or sold in the United States generally.

DATES: Submit written comments by June 16, 1999. Submit written comments on the information collection requirements by May 3, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20502, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

Enacted and later amended in 1996, the FDA Export Reform and Enhancement Act (Pub. L. 104–134, as amended by Pub. L. 104–180) significantly changed the export requirements for unapproved human drugs, biologics, devices, and animal drugs. For example, before the law was enacted, most exports of unapproved new drug products could only be made to the 21 countries then identified in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382), and these exports were subject to numerous restrictions. The FDA Export Reform and Enhancement Act amended section 802 of the act to allow, among other things, the export of unapproved new human drugs to any country in the world if the drug complies with the laws of the importing country and has valid marketing authorization from any of the following countries: Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, and the countries in the European Union (EU) and the European Economic Area (EEA) and certain other requirements are met (see section 802(b)(1)(A) of the act). Currently, the EU countries are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, Iceland, Liechtenstein, and Norway. The list of countries will expand automatically if any country accedes to the EU or becomes a member of the EEA. This provision of section 802 of the act also applies to the export of certain devices that cannot be sold or marketed in the United States.

The FDA Export Reform and Enhancement Act also modified the export authority in section 801 of the act (21 U.S.C. 381). Before enactment of the FDA Export Reform and Enhancement Act, section 801(e)(1) of the act applied to the exportation of certain foods, drugs, devices, and cosmetics. Products exported under section 801(e) of the act are not considered adulterated or misbranded if the product intended for export: (1) Meets the foreign purchaser's specifications, (2) is not in conflict with the laws of the country to which it is being exported, (3) is labeled on the outside of the shipping package that the product is intended for export, and (4) is not sold or offered for sale in domestic commerce (see section 801(e)(1) of the act). Additional requirements apply to certain devices (see section 801(e)(2) of the act). The FDA Export Reform and Enhancement Act extended these four basic requirements to all exports under sections 801 and 802 of the act, and to exports of partially processed biologics under section 351(h) of the Public Health Service Act (the PHS Act) (see section 801(e) and (f) of the act); section 802(f)(3) of the act; and section 351(h) of the PHS Act (42 U.S.C. 262(h))), and made section 801(e) of the act the principal export authority for the exportation of unapproved animal drugs other than animal drugs banned in the United States. It also imposed additional labeling requirements on certain exports of approved drugs (see section 801(f) of the act).

The FDA Export Reform and Enhancement Act also established recordkeeping and notification requirements. Products exported under section 802 of the act are subject to certain requirements under section 802(f) and (g) of the act. Section 802(f) of the act prohibits a drug or device from being exported under section 802 of the act if it: (1) Does not conform with current good manufacturing practices, (2) is adulterated under certain provisions in section 501 of the act (21 U.S.C. 351), (3) does not comply with section 801(e)(1) of the act, (4) is the subject of a determination by FDA or the United States Department of Agriculture (with respect to veterinary biologics) that the probability of reimportation of the exported drug or device would present an imminent hazard to the public health and safety of the United States, (5) would present an imminent hazard to the public health of the foreign country, (6) fails to comply with labeling requirements in the country receiving the exported drug or device, or (7) is not promoted in accordance with labeling requirements.

Section 802(g) of the act requires an exporter of a drug or device under section 802(b)(1)(A) of the act to provide a ''simple notification'' to the agency ''identifying the drug or device when the exporter first begins to export such drug or device'' to any of the 25 countries identified in section 802(b)(1)(A) of the act. For exports to other, nonlisted countries, section 802(g) of the act requires the exporter to provide a simple notification ''identifying the drug or device and the country to which such drug or device is being exported.'' This section also requires persons export under any provision of section 802 of the act to ''maintain records of all drugs or devices exported and the countries to which they were exported.''

II. Description of the Proposed Rule

The proposed rule would amend 21 CFR part 1 to create a new § 1.101 entitled ''Notification and recordkeeping.''

Proposed § 1.101(a) would describe the provision's scope as covering notifications and records required for human drug, biologic, device, animal drug, food, and cosmetic exports under

sections 801 or 802 of the act or section 351 of the PHS Act. In general, the export provisions in sections 801 and 802 of the act and section 351 of the PHS Act apply to persons exporting unapproved or otherwise violative products, products approved in the United States that will be used for unapproved uses in the foreign country, and partially processed biologics. Products that meet all applicable requirements of the act or the PHS Act for marketing and sale in the United States and are exported for the same approved indications are not subject to the export restrictions in sections 801 and 802 of the act and section 351 of the PHS Act.

Proposed § 1.101(b) would establish the recordkeeping requirements for human drugs, biologics, devices, animal drugs, foods, and cosmetics exported under or subject to section 801(e)(1) of the act. These recordkeeping requirements are intended to facilitate an evaluation of whether a person has complied with section 801(e)(1) of the act, and would apply to all products exported under sections 801 or 802 of the act. For example, to demonstrate that the exported product meets the foreign purchaser's specifications, proposed § 1.101(b)(1) would require records describing or listing the product specifications requested by the foreign purchaser, including details about the product (e.g., dosage strength, dosage form, purity, quality, operating parameters, composition, etc.) and any manufacturing specifications requested by the foreign purchaser (e.g., type of sterilization process to be used, compliance with a particular manufacturing standard, etc.). Proposed § 1.101(b)(2) would require the exporter to maintain documentation that demonstrates that the exported product does not conflict with the importing country's laws, such as a letter from the appropriate foreign government agency, department, or other authorized body stating that the product has marketing approval from the foreign government or does not conflict with that country's laws. The proposal would not consider letters or other documents from nongovernmental bodies or persons, such as company officials or attorneys in the foreign country, to be satisfactory for this purpose. Proposed § 1.101(b)(3) would require the records to include copies of any labels or labeling statements that are placed on the shipping packages that show that the packages are intended for export. Statements such as ''For export only'' may be sufficient for this purpose. Proposed § 1.101(b)(4) would require records showing that the product is not sold or offered for sale in the United States; these records could pertain to the product, its labeling, and similar products sold in the United States. Proposed § 1.101(b) would require the records to be maintained for at least 5 years from the date of exportation, and would require that the records be made available to FDA, upon request, during an inspection for review and copying.

Proposed § 1.101(c) would establish recordkeeping requirements, in addition to those required under proposed § 1.101(b), for partially processed biologics exported under section 351(h) of the PHS Act. Proposed § 1.101(c)(1) would require persons exporting a partially processed biologic under section 351(h) of the PHS Act to maintain records demonstrating that the product for export is a partially processed biological product, that is, ''not in a form applicable to the prevention, treatment, or cure of disease or injuries of man.'' This may consist of evidence showing the product's need for inactivation, fractionation, purification, or significant chemical modification before it can be used in the formulation of a final finished product for use outside the United States. Proposed § 1.101(c)(2) would require records to demonstrate that the product was manufactured in conformity with applicable good manufacturing practice requirements. Such records could include manufacturing records that allow the partially processed biological product to be traced from the assignment of a batch or lot numbering system at the U.S. firm, temperature stability data for the product during conditions of transit, and records of periodic checks of the capacity of shipping containers. Proposed § 1.101(c)(3) would require distribution records of the exported partially processed biologics, while proposed § 1.101(c)(4) would require copies of all labeling that accompanies the partially processed biological product for export, such as a container label with the statement, ''Caution: For Further Manufacturing Use Only,'' and any package insert. As in the case of records under proposed § 1.101(b), proposed § 1.101(c) would require these records to be maintained for at least 5 years from the date of exportation and that the records be made available to FDA, upon request, during an inspection for review and copying.

Proposed § 1.101(d) would establish the notification requirements for drugs, biologics, and devices exported under section 802 of the act. In brief, proposed § 1.101(d)(1) would require exporters to provide written notification to the agency that identifies the article's name, identifies its generic name if the article is a drug or the article's type if the product is a device, describes the product's strength and dosage form (if the product is a drug or biologic) or the product's model number (if the product is a device), and identifies the country that is to receive the exported article. Proposed § 1.101(d)(2) would list the addresses to which the notifications should be sent. However, these notification requirements would not apply to investigational drugs or devices exported under section 802(c) of the act. FDA published a final rule regarding investigational device exports in the **Federal Register** of May 13, 1997 (62 FR 26228).

The proposed rule would require persons exporting a product in anticipation of market authorization in a list country under section 802(d) of the act to comply with the notification requirements in proposed § 1.101(d)(1). This requirement would be consistent with an interpretation of section 802(g) of the act that considers the nexus between section 802(b)(1) and (d) of the act. Section 802(g) of the act requires exporters of drugs, biologics, and devices to provide a simple notification to the agency when they export a product to a listed country or to an unlisted country under section 802(b)(1) of the act. Section 802(b)(1) of the act permits exports when the drug, biologic, or device has received market authorization in a listed country, whereas section 802(d) of the act permits exports to a listed country in anticipation of market authorization. A literal interpretation of section 802(g) of the act would not require an exporter to notify FDA when it shipped a product to a listed country in anticipation of market authorization, but would instead require the exporter to notify FDA when the exporter shipped the same product to the same country once it receives market authorization. The agency has concluded that it would be more simple and efficient, both for exporters and FDA, if exporters notify FDA when they export a product in anticipation of market authorization under section 802(d) of the act, rather than wait for market authorization in the listed country and then notify FDA when the product is exported under section 802(b)(1) of the act. This interpretation is consistent with section 802 of the act as a whole, as well as section 701(a) of the act (21 U.S.C. 371), which authorizes regulations for the efficient enforcement of the act.

The agency acknowledges that, for exports to listed countries under section 802(b)(1) of the act, section 802(g) of the

act requires the notification to identify only the drug, biologic, or device being exported and does not expressly require the notification to identify the country to which the drug, biologic, or device is being exported. (In contrast, for drugs, biologics, or devices exported to nonlisted countries under section 802 of the act, section 802(g) of the act requires both identification of the exported product and the country to which the product is being exported.) Nevertheless, FDA is proposing to require that all export notifications under section 802(g) of the act identify the product and the importing country. FDA is taking this action because section 802(a)(2) of the act requires FDA to notify the ''appropriate public health official'' in the foreign country receiving an exported drug, biologic, or device if FDA disapproves a marketing application for the drug, biologic, or device. Additionally, section 802(f) of the act requires FDA to consult with the ''appropriate public health official in the affected country'' in the event that an exported drug, biologic, or device presents an imminent hazard to the public health. Similar consultation obligations exist if the product's labeling is not in accordance with the requirements and conditions for use in the country in which the drug, biologic, or device has valid marketing authorization and the country to which the drug, biologic, or device is being exported or if the drug, biologic, or device is not promoted in accordance with the labeling requirements of section 802(f) of the act. Thus, to facilitate these notifications and consultations with foreign officials (particularly in the event that FDA disapproves a drug, biologic, or device that has been exported, or the exported product presents an imminent hazard to the public health of the receiving country), FDA must know where the products have been exported. Consequently, proposed § 1.101(d)(1)(iv) would require all notifications to identify the country or countries that are to receive the exported product.

FDA, however, invites comment on possible alternatives to this notification requirement that would satisfy the consultation, notification, and recordkeeping obligations and requirements in section 802 of the act. The agency is especially interested in alternatives that would reduce the paperwork burden, such as electronic submissions and recordkeeping or periodic notifications (e.g., monthly, quarterly, etc.), and the details of such alternatives.

Proposed § 1.101(e) would establish additional recordkeeping requirements for exported drugs, biologics, and devices subject to section 802(g) of the act. These records would include, but not be limited to, records concerning the product's name; its generic name if the product is a drug or a biologic or the type of device if the product is a device; a description of its strength and dosage form and the product's lot or control number (if the product is a drug or biologic) or the product's model number (if the product is a device); the consignee's name and address; and the date on which the product was exported and the quantity of product exported. The proposal would require these records to be kept at the site from which the products were exported and be maintained for 5 years after the date of exportation. The proposal would require that these records be made readily available for review and copying by FDA during an inspection, and these records would be in addition to those records required under proposed § 1.101(b).

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). The title, description, and respondent description of the information collection requirements are shown as follows, with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Exports: Notification and Recordkeeping Requirements.

Description: The proposed rule would establish the notification and recordkeeping requirements for persons exporting a human drug, biologic, device, animal drug, food, or cosmetic under section 801(e) or 802 of the act or section 351(h) of the PHS Act.

Description of Respondents: Businesses.

TABLE 1.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1.101(b)	316	2.8	885	1	885
1.101(c)	8	2	16	2	32
1.101(d)	244	2.4	586	1	586
1.101(e)	175	3.3	578	2	1,156
Total					2,659

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates are based on the number of notifications received by the relevant FDA centers in 1996 or 1997 (depending on the last year for which figures were available) as well as consultations with industry sources.

As required by section 3507(d) of the PRA, FDA has submitted a copy of this proposed rule to OMB for its review of these previously approved information collection requirements. The agency solicits comments on the information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those

who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of reports.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize new benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes this proposed rule is consistent with the regulatory philosophy and the principles identified in the Executive Order. In addition, the proposed rule is a significant regulatory action as defined in the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. The proposed rule will not have a significant economic impact on a substantial number of small entities, but FDA has conducted an initial regulatory flexibility analysis to ensure that impacts on small entities were assessed and to alert any potentially impacted small entities to the opportunity to submit comments to FDA.

The proposed rule would implement the notification and recordkeeping aspects of the FDA Export Reform and Enhancement Act. The proposal requires firms that export unapproved new drugs, biologics, and devices under section 802 to notify FDA. The notification would identify the product being exported (name and description) and the product's destination. The proposal would also require firms that export human drugs, biologics, devices, animal drugs, foods, and cosmetics to maintain records demonstrating their compliance with the statutory requirements in sections 801(e) or 802 of the act or section 351(h) of the PHS Act (whichever is applicable).

FDA's initial determination that the rule will not have a significant economic impact on a substantial number of small entities is based on the estimated reporting and recordkeeping costs for the rule. Industry sources suggest that an average notification under the rule would require 1 hour to prepare and that the average wage is $30 per hour. Combining this information with information from FDA's export records (which suggest approximately 2.4 exports per firm), an exporting firm's notification cost would be $72 ($30 x 2.4).

FDA's export records also suggest that the average number of records varies (depending on the product involved) from 2.8 to 5.1 records per firm. Industry sources project the average recordkeeping cost to be $100 per record, so the recordkeeping cost per firm ranges from $280 for firms exporting products that are subject only to section 801(e) of the act to $510 for firms exporting products under section 802 of the act and to $480 for firms exporting products under section 351(h) of the PHS Act.

Thus, because the estimated proposed notification and recordkeeping costs are low, the proposed rule, if finalized, should not have a significant economic impact on a substantial number of small entities.

FDA considered alternatives that would require less information to be retained in the required records. For example, one alternative would be to require the notification to provide only the product's name and destination. However, because drug products may vary in dosage strength and size and yet still share the same name, a notice that merely named the product would not be sufficiently revealing to inform FDA about the exported drug. Another alternative would be to shorten the recordkeeping period, but because FDA's inspection resources have a wide range of obligations, from factory inspections to examining imports, a shorter time period would increase the likelihood of records being lost or destroyed before FDA could inspect an exporting firm.

The Unfunded Mandates Reform Act (Pub. L. 104–114) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). FDA estimates that the total recordkeeping costs for industry under the proposed rule would be $207,300. This estimate is based on a projected 2,073 records per year, multiplied by an industry cost of $100 per record. The total estimated reporting cost to industry is $17,580. This estimate is derived from the estimated total burden hours for reports (586) multiplied by a wage of $30 per hour per report. Because these expenditures will not result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

VI. Requests for Comments

Interested persons may, on or before June 16, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs (address above).

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Section 1.101 is added to subpart E to read as follows:

§ 1.101 Notification and recordkeeping.

(a) *Scope.* This section pertains to notifications and records required for human drug, biologic, device, animal drug, food, and cosmetic exports under sections 801 or 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381 and 382) or section 351 of the Public Health Service Act (42 U.S.C. 262) .

(b) *Recordkeeping requirements for human drugs, biologics, devices, animal drugs, foods, and cosmetics exported under or subject to section 801(e)(1) of the act.* Persons exporting an article under section 801(e)(1) of the act or an article otherwise subject to section 801(e)(1) of the act shall maintain records as enumerated in paragraphs (b)(1) through (b)(4) of this section demonstrating that the product meets the requirements of section 801(e)(1) of the act. Such records shall be

maintained for at least 5 years from the date of exportation. The records shall be made available to the Food and Drug Administration (FDA), upon request, during an inspection for review and copying by FDA.

(1) Records demonstrating that the product meets the foreign purchaser's specifications. Such records shall include descriptions or lists of product specifications requested by the foreign purchaser, such as product details (e.g., dosage strength, dosage form, purity, quality, operating parameters, composition, etc.) and manufacturing specifications requested by the foreign purchaser (e.g., type of sterilization process to be used, compliance with a particular manufacturing standard, etc.);

(2) Records demonstrating that the product does not conflict with the laws of the importing country, such as a letter from an appropriate foreign government agency, department, or other authorized body stating that the product has marketing approval from the foreign government or does not conflict with that country's laws. Letters or other documents from nongovernmental bodies or persons, such as company officials or attorneys in the foreign country, are not acceptable. If the letter or other document from the foreign government is not in English, the person exporting the article must have an English-language translation of that document or be prepared to translate the document into English at the time of any FDA inspection;

(3) Records demonstrating that the product is labeled on the outside of the shipping package that it is intended for export, including copies of any labels or labeling statements, such as ''For export only,'' that are placed on the shipping packages; and

(4) Records demonstrating that the product is not sold or offered for sale in the United States, such as documentation concerning the product, its labeling, and similar products sold in the United States.

(c) *Additional recordkeeping requirements for partially processed biologics exported under section 351(h) of the Public Health Service Act.* In addition to the requirements in paragraph (b) of this section, persons exporting a partially processed biologic under section 351(h) of the Public Health Service Act shall maintain, for at least 5 years from the date of exportation and make available to FDA, upon request, during an inspection for review and copying by FDA, the following records:

(1) Records demonstrating that the product for export is a partially processed biological product and not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

(2) Records that demonstrate that the partially processed biological product was manufactured in conformity with current good manufacturing practice requirements;

(3) Distribution records of the exported partially processed biological products; and

(4) Copies of all labeling that accompanies the exported partially processed biological product, such as a container label with the statement, ''Caution: For Further Manufacturing Use Only'' and any package insert.

(d) *Notification requirements for drugs, biologics, and devices exported under section 802 of the Federal Food, Drug, and Cosmetic Act.* (1) Persons exporting a human drug, biologic, or device under section 802 of the Federal Food, Drug, and Cosmetic Act, other than a drug or a device for investigational use exported under section 802(c) of the Federal Food, Drug, and Cosmetic Act, shall provide written notification to the Food and Drug Administration. The notification shall identify:

(i) The product's name;

(ii) If the product is a drug or biologic, the product's generic name or, if the product is a device, the type of device;

(iii) If the product is a drug or biologic, a description of the product's strength and dosage form or, if the product is a device, the product's model number; and

(iv) The country that is to receive the exported article.

(2) The notification shall be sent to the following addresses:

(i) For biological drug products and devices regulated by the Center for Biologics Evaluation and Research—Division of Case Management (HFM–610), Office of Compliance, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, rm. 200N, Rockville, MD 20852–1448;

(ii) For human drug products—Division of Labeling and Nonprescription Drug Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855–2737;

(iii) For devices—Division of Program Operations (HFZ–305), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850.

(e) *Recordkeeping requirements for products subject to section 802(g) of the act.* (1) Any person exporting a product under any provision of section 802 of the act shall maintain records of all drugs, biologics, and devices exported and the countries to which the products were exported. In addition to the requirements in paragraph (b) of this section, such records include, but are not limited to, the following:

(i) The product's name;

(ii) If the product is a drug or biologic, the product's generic name or, if the product is a device, the type of device;

(iii) If the product is a drug or biologic, a description of its strength and dosage form and the product's lot or control number or, if the product is a device, the product's model number;

(iv) The consignee's name and address; and

(v) The date on which the product was exported and the quantity of product exported.

(2) These records shall be kept at the site from which the products were exported and be maintained at least 5 years after the date of exportation. The records shall be made available to FDA, upon request, during an inspection for review and copying by FDA.

Dated: December 23, 1998.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8159 Filed 4–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 99N–0554]

Implementation of the Food and Drug Administration Modernization Act; Provisions for Use in Food Labeling of Health Claims and Nutrient Content Claims Based on Authoritative Statements; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of March 24, 1999 (56 FR 14178). This document announced a forthcoming public meeting concerning implementation of sections 303 and 304 of the FDA Modernization Act of 1997. The document published with an incorrect title. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy (HF–

27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

In FR Doc. 99–7115, appearing on page 14178 in the **Federal Register** of March 24, 1999, the following correction is made:

On page 14178, in the second column, the title ''How to Use Health Claims and Nutrient Content Claims in Food Labeling; Public Meeting'' is corrected to read ''Implementation of the Food and Drug Administration Modernization Act; Provisions for Use in Food Labeling of Health Claims and Nutrient Content Claims Based on Authoritative Statements; Public Meeting''.

Dated: March 25, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8094 Filed 4–1–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Workshops on Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extended workshops.

SUMMARY: The Minerals Management Service is extending the April 6, 1999, Federal oil royalty valuation workshop (Workshop 3). On March 12, 1999 (64 FR 12267), MMS announced it would reopen the comment period and hold three workshops to discuss unresolved issues pertaining to the proposed Federal oil valuation rule. The workshops were scheduled in Houston, Texas, March 24; Albuquerque, New Mexico, March 25; and Washington, D.C., April 6. Based on the various proposals and questions that surfaced during the Houston and Albuquerque workshops, the workshop participants agreed that additional time would be needed to resolve those questions and evaluate the proposals. Therefore, MMS is extending the workshop in Washington, D.C., to 2 days.

DATES: April 6–7, 1999, beginning at 9 a.m. and ending 5 p.m. Eastern time.

ADDRESSES: Workshop 3 will be held at the Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240 (large buffet room adjacent to the cafeteria in the basement). Phone: (202) 208–3512.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax number (303) 231–3385, e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The workshops will be open to the public without advance registration. Public attendance may be limited to the space available. We encourage a workshop atmosphere; members of the public are encouraged to participate in a discussion of the alternatives. For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: March 29, 1999.

Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–8132 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 195–0101b FRL–6235–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Yolo-Solano Air Quality Management District, Monterey Bay Unified Air Pollution Control District, South Coast Air Quality Management District, Santa Barbara County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District, and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from organic solvent cleaning, and surface preparation and clean-up.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 3, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

Sacramento Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

This document concerns Yolo-Solano Air Quality Management District Rule 2.31—Surface Preparation and Cleanup, Monterey Bay Unified Air Pollution Control District Rule 433—Organic Solvent Cleaning, South Coast Air Quality Management District Rule 1122—Solvent Degreasers, Santa Barbara County Air Pollution Control

District Rule 321—Solvent Cleaning Operations, Sacramento Metropolitan Air Quality Management District Rule 454—Degreasing Operations, and Kern County Air Pollution Control District Rule 410.3—Organic Solvent Cleaning, submitted to EPA on November 30, 1994, June 3, 1997, September 8, 1997, March 10, 1998, May 18, 1998, and June 23, 1998, respectively, by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: February 16, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–8084 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 64, No. 63

Friday, April 2, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1999 through June 30, 2000. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Commodity School Program. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price means in the National School Lunch Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Child and Adult Care Food Program (7 CFR part 226), and Commodity School Program (7 CFR part 210), and the guidelines for free milk in the Special Milk Programs for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to serve *free meals* to all children from any household with income at or below *130* percent of the poverty guidelines. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any household with income higher than *130* percent of the poverty guidelines, but at or below *185* percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program for Children may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

''Income,'' as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

''Income,'' as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1999 through June 30, 2000. The Department's guidelines for free meals and milk and reduced price means were obtained by multiplying the 1999 Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

BILLING CODE 3410–30–M

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 1999 to June 30, 2000)

Household size	Federal Poverty Guidelines			Reduced Price Meals - 185%			Free Meals - 130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES									
1	8,240	687	159	15,244	1,271	294	10,712	893	206
2	11,060	922	213	20,461	1,706	394	14,378	1,199	277
3	13,880	1,157	267	25,678	2,140	494	18,044	1,504	347
4	16,700	1,392	322	30,895	2,575	595	21,710	1,810	418
5	19,520	1,627	376	36,112	3,010	695	25,376	2,115	488
6	22,340	1,862	430	41,329	3,445	795	29,042	2,421	559
7	25,160	2,097	484	46,546	3,879	896	32,708	2,726	629
8	27,980	2,332	539	51,763	4,314	996	36,374	3,032	700
For each add'l family member add	+2,820	+235	+55	+5,217	+435	+101	+3,666	+306	+71
ALASKA									
1	10,320	860	199	19,092	1,591	368	13,416	1,118	258
2	13,840	1,154	267	25,604	2,134	493	17,992	1,500	346
3	17,360	1,447	334	32,116	2,677	618	22,568	1,881	434
4	20,880	1,740	402	38,628	3,219	743	27,144	2,262	522
5	24,400	2,034	470	45,140	3,762	869	31,720	2,644	610
6	27,920	2,327	537	51,652	4,305	994	36,296	3,025	698
7	31,440	2,620	605	58,164	4,847	1,119	40,872	3,406	786
8	34,960	2,914	673	64,676	5,390	1,244	45,448	3,788	874
For each add'l family member add	+3,520	+294	+68	+6,512	+543	+126	+4,576	+382	+88
HAWAII									
1	9,490	791	183	17,557	1,464	338	12,337	1,029	238
2	12,730	1,061	245	23,551	1,963	453	16,549	1,380	319
3	15,970	1,331	308	29,545	2,463	569	20,761	1,731	400
4	19,210	1,601	370	35,539	2,962	684	24,973	2,082	481
5	22,450	1,871	432	41,533	3,462	799	29,185	2,433	562
6	25,690	2,141	495	47,527	3,961	914	33,397	2,784	643
7	28,930	2,411	557	53,521	4,461	1,030	37,609	3,135	724
8	32,170	2,681	619	59,515	4,960	1,145	41,821	3,486	805
For each add'l family member add	+3,240	+270	+63	+5,994	+500	+116	+4,212	+351	+81

Authority: (42 U.S.C. 1758(b)(1))

Dated: March 26, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–8127 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Drew Creek, Diamond Rock, and Divide Cattle Allotments, Tiller Ranger District, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposal to issue term grazing permits to graze three livestock allotments on the Tiller Ranger District. The three allotments are called Drew Creek, Diamond Rock, and Divide. The proposed action is to issue ten-year term grazing permits to allow 216 cow/calf pairs to graze on these three allotments. The allotment areas are located approximately 35 miles north of Medford, Oregon. If the proposed action or another action alternative is selected, activities under the selected action are expected to be implemented in the year 2000. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by April 30, 1999.

ADDRESSES: Send written comments and suggestions concerning this proposal to Jill Dufour, District Ranger, Tiller Ranger District, 27812 Tiller Trail Highway, Tiller, Oregon 97484.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action, allotment areas, or EIS to Wes Yamamoto, Resource Assistant, Tiller Ranger District, 27812 Tiller Trail Highway, Tiller, Oregon 97484, or (541) 825–3201.

SUPPLEMENTARY INFORMATION: The current grazing program on the Tiller Ranger District allows 3,953 head months of use on six grazing allotments covering approximately 129,350 acres. The proposed action is to permit 1,288 head months (HM's) to graze on three allotments encompassing approximately 36,230 acres of the Tiller Ranger District. Under the proposed action, 90 HM's would be permitted on the Drew Creek Allotment, 680 HM's on the Diamond Rock Allotment, and 418 HM's on the Divide Allotment.

This proposal represents a significant decrease in the level of grazing from the historical use of the Tiller Ranger District. The proposal removes cattle grazing for the majority of sensitive earthflow landforms and reduces the season of use for fifty percent of the permitted numbers during the fall. The reduced landbase, reduced numbers of cattle, and reduced season will allow for a grazing program that is consistent with the Aquatic Conservation Strategy (ACS) objectives of the Umpqua National Forest Plan, as amended.

Initial scoping for the preparation of an environmental assessment (EA), titled ''Range Permit Reissuance'', began with a notice in the Umpqua National Forest's Schedule of Proposed Actions (SOPA) dated July, 1995. The scoping conducted since that initial notice includes an open house for the community (September 12, 1996), numerous meetings with permittees beginning in 1996, field trips with the public and specialists, and a press release to the media in 1998. Discussion of the grazing issue with subject matter experts, including representatives from the Oregon State University Extension Service, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service, has been occurring since 1996. This extensive scoping has identified a number of issues, alternatives, and environmental effects that will facilitate preparation of the draft EIS.

Preliminary issues identified to date include potential effects to unique characteristics of the geographic area, endangered and threatened species and their habitats, and the significant incremental economic impact that this proposal would have to a small, economically-depressed rural community. These preliminary issues demonstrate to the decisionmaker that this proposal has potential to have significant effects on the human environment. Preliminary discussions have also produced scientific controversy pertaining to interpretations of the Aquatic Conservation Strategy in the 1994 Northwest Forest Plan. Based on all of above, the Responsible Official has determined that it is appropriate to proceed with an environmental impact statement.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by July, 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available in October, 1999.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Don Ostby, Forest Supervisor for the Umpqua National Forest. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR Part 215.

Dated: March 24, 1999.

Bernie Rios,

Acting Forest Supervisor.

[FR Doc. 99–8136 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on April 7, 1999, at the Whiskeytown Environmental School, Whiskeytown National Park, California. The meeting will begin at 9:30 am and adjourn at 4:00 pm Agenda items include: (1) Update on the Clear Creek Watershed—update on grant proposals (CalFed); (2) Owl baseline—management implications (USFWS presentation); and (3) Update on Northwest Forest Plan activities in Portland, Oregon. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468; TDD (530) 841–4573; email: chendryx/r5__klamath@fs.fed.us.

Dated: March 29, 1999.

Nancy J. Gibson,

Acting Forest Supervisor.

[FR Doc. 99–8139 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Wisconsin

AGENCY: Natural Resources Conservation Service (NRCS) in Wisconsin, US Department of Agriculture.

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Wisconsin for review and comment.

SUMMARY: It is the intention of NRCS in Wisconsin to issue a revised conservation practice standard in Section IV of the FOTG. The revised standard is Nutrient Management (Code 590). This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Donald A. Baloun, Assistant State Conservationist, Natural Resources Conservation Service (NRCS), 6515 Watts Road, Suite 200 Madison, WI 53719–2726. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to dbaloun@wi.nrcs.usda.gov.

FOR FURTHER INFORMATION CONTACT: Donald A. Baloun, 608–276–8732.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Wisconsin will receive comments relative to the proposed change. Following that period, a determination will be made by the NRCS in Wisconsin regarding disposition of those comments and a final determination of change will be made.

Dated: March 10, 1999.

Patricia S. Leavenworth,

State Conservationist, Madison, Wisconsin.

[FR Doc. 99–8144 Filed 4–1–99; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 3, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Stapler

7520–00–240–5727
7520–00–281–5895
7520–00–281–5896
7520–00–139–6170
7520–00–243–1780
NPA: Occupations, Inc., Middletown, New York.

Services

Administrative Services

Department of Veterans Affairs Medical Center, 700 South 19th Street, Birmingham, Alabama.
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama.

Administrative Services

U.S. Department of Housing & Urban Development, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia.

NPA: Blind & Low Vision Services of North Georgia, Smyma, Georgia.

Grounds Maintenance at the Following Locations in El Paso, Texas:

Sequra USAR Center, 301 Ascarate Drive, Dyer USAR Center.

NPA: Goodwill Industries of El Paso, El Paso, Texas.

Janitorial/Custodial

Dobbins Air Reserve Base, Georgia, NPA: Nobis Enterprises, Inc., Marietta, Georgia.

Janitorial/Custodial

Sequra USAR Center, 301 Ascarate Drive, El Paso, Texas.

NPA: Goodwill Industries of El Paso, El Paso, Texas.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodity and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for deletion from the Procurement List.

The following commodity and service have been proposed for deletion from the Procurement List:

Commodity

Clamp, Panel

5450–00–297–5271

Service

Janitorial/Custodial

Grenier Field USARC, Manchester, New Hampshire.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–8233 Filed 4–2–99; 8:45 am]

BILLING CODE 6353–01–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 3, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 11, 1998, January 15 and 29, and February 19, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 68428, 64 F.R. 2623, 4638, and 8291) of proposed additions to the Procurement List.

The Following Comments Pertain to Strap, Webbing

Comments were received from one of the current contractors in response to a Committee request for corporate sales data. The contractor indicated that it is a small company with a significant portion of its business coming from Government sales of webbing straps. It noted that the nonprofit agency which will produce the straps being added to the Procurement List also produces other straps which the Government formerly procured competitively. The contractor requested that the Committee not take these webbing straps or any more out of the competitive procurement arena.

In making a decision to add a commodity to the Procurement List, the Committee assesses the impact of its decision on the current contractor for the commodity. The straps at issue here represent only a small part of the contractor's sales, well below the level which the Committee normally considers to be severe adverse impact. In addition, the commenting contractor was not the current contractor for any of the other straps mentioned when they were added to the Procurement List. As no contractor is guaranteed a contract under the competitive procurement system, the Committee does not consider the loss of a chance to bid on contracts, by itself, to constitute severe adverse impact on a potential bidder. Consequently, the Committee does not believe that addition of the straps at issue to the Procurement List will have a severe adverse impact on the commenting contractor.

The following Material Pertains to All of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Strap, Webbing

5340–00–753–3740
5340–00–543–3271
5340–00–543–3398
5340–00–052–9481
5340–00–664–0364
5340–00–543–7110
5340–00–543–3173
5340–00–479–2949
5340–00–751–9013
5340–00–543–3557
5340–00–403–7674
5340–00–664–0365
5340–00–001–4837
5340–00–854–6737

5340–00–020–5067
5340–00–034–4835
5340–00–454–5967
5340–00–454–5969

SuperDisk Drive

7045–01–454–8199

Cup, Paper, Disposable, Hot

7350–00–205–1182
7350–00–290–0588
7350–00–988–6498

Paper, Tabulating Machine

7530–00–800–0996

(Requirements of Burlington, New Jersey only)

Services

Mail and Messenger Service

Security Assistance Management Directorate (SAMD), Buildings 7611, 7612 and 7613, Redstone Arsenal, Alabama.

Mailroom Operation

U.S. Coast Guard Yard, 2401 Hawkins Point Road, Baltimore, Maryland.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–8234 Filed 4–2–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 Pub. L. 92–463, As amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 20–21 April 1999, (8:00 a.m. to 16:00 p.m.).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–8143 Filed 4–1–99; 8:45 am]

BILLING CODE 5000–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 3, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 26, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600o TAPC

SYSTEM NAME:

Army Career and Alumni Program, Pre-separation and Job Assistance Counseling *(March 17, 1998, 63 FR 13038).*

Changes:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Army Career and Alumni Management Information System, Pre-separation and Job Assistance Counseling.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the routine use 'To Commission on Servicemembers and Veterans Transition Assistance or its contractors, for purposes of carrying out those functions as set forth in Pub. L. 104–275, section 702.'

* * * * *

A0600o TAPC

SYSTEM NAME:

Army Career and Alumni Management Information System, Pre-separation and Job Assistance Counseling.

SYSTEM LOCATION:

Primary location: Headquarters, U.S. Total Army Personnel Command, ATTN: TAPC-PDT-O, 200 Stoval Street, Alexandria, VA 22332–0476.

Secondary locations: Army Career and Alumni Program Centers. A complete list of ACAP centers may be obtained by writing to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (active/reserve duty) and their spouses; U.S. Coast Guard personnel and their spouses; Department of Defense civilian employees and their spouses; U.S. Army National Guard personnel and their spouses; DoD personnel who retired no earlier than ninety (90) days prior to the date they requested ACAP services; and widows and widowers of deceased active duty military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain individual's name, home address, Social Security Number, date of

birth, job qualifications, DD Form 2648 (Pre-Separation Counseling Checklist), and similar or pre-separation/transition counseling related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapter 58; DoD Directive 1332.35; and E.O. 9397 (SSN).

PURPOSE(S):

To provide transition planning/counseling for individuals so that they may re-enter the civilian job market.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically on computers and on paper in file folders.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated personnel whose official duties require they have access. The personal computer system can only be accessed through a system of passwords known only to the individual and the system administrator/supervisor. Paper files are secured in locked file cabinets. The areas where the personal computer and paper files are located are secured after duty hours in locked buildings.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDT-O, 200 Stovall Street, Alexandria, VA 22332–0476.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in the system should address written inquiries to the Director of the ACAP Center where transition assistance was obtained or contact the system manager.

Requesting individual must submit full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Director of the ACAP Center where transition assistance was obtained or contact the system manager.

Requesting individual must submit full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and the U.S. Coast Guard records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings *(February 22, 1993, 58 FR 10002).*

Changes:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add the following to the entry '10 U.S.C. 3013, Secretary of the Army; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete the last four words and replace with 'for retention or separation'.

* * * * *

STORAGE:

Add to entry 'and electronic storage media.'

RETRIEVABILITY:

Add to entry 'or Social Security Number.'

* * * * *

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, ATTN: TAPC-PDT-P, 200 Stovall Street Alexandria, VA 22332–0478. Segments exist at Major Army Commands and subordinate commands, field operating agencies, and activities exercising general courts-martial jurisdiction. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on whom allegations of defective enlistment/agreement/fraudulent entry/alcohol or other drug abuse rehabilitation failure/unsatisfactory performance/misconduct/homosexuality under the provisions of Chapters 7, 9, 13, 14, or 15 of Army Regulation 635–200, Enlisted Personnel, result in administrative board proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to service member of allegations on which proposed separation from the Army is based; supporting documentation; DA Form 2627, Records of Proceedings under Article 15, UCMJ; DD Form 493, Extract of Military Records of Previous Convictions; medical evaluations; military occupational specialty evaluation and aptitude scores; member's statements, testimony, witness statements, affidavits, rights waiver record; hearing transcript; board findings and recommendations for separation or retention; final action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1169, 10 U.S.C. 3013, Secretary of the Army; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used by processing activities and the approval authority to determine if the member meets the requirements for retention or separation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are accessed only by designated persons having official need; in locked cabinets, in locked rooms within secure buildings.

RETENTION AND DISPOSAL:

The original of board proceedings becomes a permanent part of the member's Official Military Personnel Record. When separation is ordered, a copy is sent to member's commander where it is retained for two years before being destroyed. When separation is not ordered, board proceedings are filed at the headquarters of the separation authority for two years, then destroyed. A copy of board proceedings in cases where the final authority is the U.S. Total Army Personnel Command, pursuant to Army Regulation 635–200, is retained by that headquarters (TAPC-PDT) for one year following decision.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDT-P, 200 Stovall Street, Alexandria, VA 22332–0478.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDT-P, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

RECORD ACCESS PROCEDURES:

If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Avenue, St Louis, MO 63132–5200: proceedings will be part of the Official Military Personnel Record.

If member is on active duty, address written inquiries to the commander of the installation where administrative board convened.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; individual's commander; Army personnel, medical, and/or investigative records; witnesses; the Administrative Separation Board; federal, state, local, and/or foreign law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8172 Filed 4–1–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Meeting by Teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting by teleconference of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. The public is being given less than 15 days' notice because of the need to accommodate the schedules of the members.

Date: April 5, 1999.

Time: 10 a.m. to noon, EST.

Location: Room 100, 80 F St., NW, Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov, or nerppb@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the activities of the Office. The teleconference is open to the public. The Board will discuss and give final approval to a policy statement on issues relating to the reauthorization of the Office of Educational Research and Improvement. A final agenda is available from the Board office.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: March 29, 1999.

Eve M. Bither,

Executive Director.

[FR Doc. 99–8090 Filed 4–1–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–2843–007, ER98–2844–007, ER98–2883–007 (Not Consolidated); ER98–2972–008, ER98–2971–007 (Not Consolidated); ER98–2977–006; ER98–3106–004; ER98–3416–006, ER98–3417–006, ER98–3418–006 (Not Consolidated)]

AES Redondo Beach, LLC; AES Huntington Beach, LLC; AES Alamitos, LLC; Long Beach Generation, LLC; El Segundo Power, LLC; Ocean Vista Power Generation, LLC; Mountain Vista Power Generation, LLC; Alta Power Generation, LLC; Oeste Power Generation, LLC; Ormond Beach Power Generation, LLC; Williams Energy Services Company; Duke Energy Oakland, LLC; Duke Energy Morro Bay, LLC; Duke Energy Moss Landing, LLC; Notice of Filing

March 29, 1999.

Take notice that on March 25, 1999, the Market Surveillance Committee (MSC) of the California Independent System Operator Corporation (ISO) filed with the Federal Energy Regulatory Commission its ''Report on Redesign of Markets for Ancillary Services and Real-Time Energy'' prepared in compliance with the Commission's October 28, 1998 Order and March 22, 1999 letter order in the above-captioned proceedings. The MSC has requested confidential treatment, on a temporary basis, of certain information contained in the report in accordance with Section 388.112 of the Commission's regulations (18 CFR 388.112). The ISO has served public versions of the report, which do not contain the information for which temporary confidential treatment is sought, upon each person on the official service list in the above-captioned proceedings.

Any person desiring to be heard or to protest such filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 12, 1999. Once the ISO releases the entire report to the public, parties will have an opportunity to supplement their comments and/or protests. Protests will be considered by the Commission to determine the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8117 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–55–000]

Central Vermont Public Service Corporation; Notice of Filing

March 29, 1999.

Take notice that on March 23, 1999, Central Vermont Public Service Corporation (Central Vermont) filed an application under Section 203 of the Federal Power Act and Part 33 of the Commission's regulations for expedited authorization to acquire a security from its wholly-owned subsidiary, Connecticut Valley Electric company, Inc. (Connecticut Valley). Central Vermont seeks authorization to purchase a note and its related loan agreement between Connecticut Valley and Citizens Bank New Hampshire (Citizens Bank) in a face amount of $3.75 million. Central Vermont states that Connecticut Valley is in default on the note payments and that Central Vermont must purchase the note and loan agreement to prevent acceleration and attachment and foreclosure proceedings against Connecticut Valley. Unless Central Vermont acts quickly to cure the default, Connecticut Valley may become insolvent, and Central Vermont's credit rating will be adversely affected.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to made protetants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8118 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–11–000]

The Cincinnati Gas & Electric; Notice of Rate Election

March 29, 1999.

Take notice that on March 1, 1999, The Cincinnati Gas & Electric Company (Cincinnati) filed a rate election, pursuant to 284.123(b)(1)(ii) of the Commission's regulations. Cincinnati proposes an effective date of March 1, 1999. The filing contains the Operating Statement required by Section 284.224 of the Commission's regulations

Pursuant to 284.123(b)(1)(ii) of the Commission's regulations, Cincinnati proposes to utilize a cost-based rate that has been approved by the Public Service Commission of Ohio, in this instance Cincinnati's currently effective Rate IT for comparable interruptible transportation service.

Cincinnati's commodity charge included in the Rate IT (currently $0.544 per MCF) would supplant the rate previously accepted by the Commission. This commodity charge will be the sole charge applicable to the service rendered pursuant to Cincinnati's Order No. 63 blanket certificate, thereby excluding the incremental charges otherwise applicable under Rate IT that are intended to recover costs associated with Cincinnati's retail distribution service.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before April 12, 1999. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to this proceeding or to participate as a party in any hearing herein must file a motion to intervene in accordance with the Commission's Rules. The petition for rate election is available for inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.us/online/rims.htm [Call (202) 208–2222 for assistance].

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8115 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–99–000, et al.]

Central Piedra Buena, S.A., et al.; Electric Rate and Corporate Regulation Filings

March 26, 1999.

Take notice that the following filings have been made with the Commission:

1. Central Piedra Buena S.A.

[Docket No. EG99–99–000]

Take notice that on March 23, 1999, Central Piedra Buena S.A. (Applicant), Av. Alicia Moreau de Justo 240, 3 Piso, Buenos Aires, Argentina 1107, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, formed under the laws of the Republic of Argentina, wholly owns the Piedra Buena Station. Corporacion Independiente de Energia S.A., which is a wholly-owned subsidiary of the Independent Power International Ltd., owns 39% of the equity of Central Piedra Buena S.A. New Century International, Inc. owns a 21.6% interest in Independent Power International Ltd. New Century International, Inc. is a

wholly-owned subsidiary of NC Enterprises, Inc., which in turn is a wholly-owned subsidiary of New Century Energies, Inc., a registered holding company. Applicant intends to indirectly through an affiliate own or operate, or both own and operate, all or part of the Piedra Buena Station. This facility is a 620 MW steam power station, capable of burning natural gas, oil, or coal, and consists of two generating units, and associated equipment, buildings, and land. Applicant states that the facility may be repowered to add approximately 500 MW of additional capacity.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Independent Power International Ltd.

[Docket No. EG99–100–000]

On March 23, 1999, Independent Power International Ltd. (Applicant), Akara Building, 24 Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, formed under the laws of the Jersey Isles, wholly owns Corporacion Independiente de Energia S.A., an Argentine corporation, which in turn owns a 39% equity interest in Central Piedra Buena S.A., also an Argentine corporation. Central Piedra Buena S.A. owns the Piedra Buena Station. New Century International, Inc. owns a 21.6% interest in Applicant. New Century International, Inc. is a wholly-owned subsidiary of NC Enterprises, Inc., which in turn is a wholly-owned subsidiary of New Century Energies, Inc., a registered holding company. Applicant intends to indirectly through an affiliate own or operate, or both own and operate, all or part of the Piedra Buena Station. This facility is a 620 MW steam power station, capable of burning natural gas, oil, or coal, and consists of two generating units, and associated equipment, buildings, and land. Applicant states that the facility may be repowered to add approximately 500 MW of additional capacity.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Corporacion Independiente de Energia S.A.

[Docket No. EG99–101–000]

Take notice that on March 23, 1999, Corporacion Independiente de Energia S.A. (Applicant), Alsina 495, Piso 10, Capital Federal, Buenos Aires, Argentina 1107, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, formed under the laws of the Republic of Argentina, owns a 39% equity interest in Central Piedra Buena S.A., also an Argentine corporation, which wholly owns the Piedra Buena Station. Applicant is wholly owned by Independent Power International Ltd., which is organized under the laws of the Jersey Isles. New Century International, Inc. owns a 21.6% interest in Independent Power International Ltd.

New Century International, Inc. is a wholly-owned subsidiary of NC Enterprises, Inc., which in turn is a wholly-owned subsidiary of New Century Energies, Inc., a registered holding company. Applicant intends to indirectly through an affiliate own or operate, or both own and operate, all or part of the Piedra Buena Station. This facility is a 620 MW steam power station, capable of burning natural gas, oil, or coal, and consists of two generating units, and associated equipment, buildings, and land. Applicant states that the facility may be repowered to add approximately 500 MW of additional capacity.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Gregory R. Swecker v. Midland Power Cooperative

[Docket No. EL99–41–000]

Take notice that on March 15, 1999, Gregory R. Swecker filed an amendment to his complaint against Midland Power Cooperative.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Fresno Irrigations District

[Docket No. EL99–50–000]

Take notice that on March 22, 1999, Fresno Irrigation District (Fresno) tendered for filing an Application for an Order Directing the Establishment of Physical Interconnection of Facilities Pursuant to Sections 202 and 210 of the Federal Power Act and Part 32 of the Commission Regulations, 18 CFR Part 32. The application seeks an order requiring Pacific Gas and Electric Company to interconnect its transmission system with Fresno's 12 kV distribution system at points identified in Fresno's application.

Fresno also seeks an order requiring Pacific Gas and Electric Company to file an interconnection agreement or electric tariff establishing just and reasonable terms, conditions and charges under which such interconnection shall be operated and maintained.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER97–4573–002]

Take notice that on March 19, 1999, Florida Power Corporation tendered for filing a refund compliance report in compliance with the Commission's November 2, 1998, letter order.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corp.

[Docket Nos. ER99–1002–000 and ER99–1050–000]

Take notice that on March 22, 1999, Allegheny Power Service Corporation tendered for filing an amendment to its filing in these dockets to comply with Commission requirements.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER99–2225–000]

Take notice that on March 23, 1999, New York State Electric & Gas Corporation (NYSEG), tendered filing a Service Agreements between NYSEG and Carolina Power & Light and Edison Mission Energy (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of March 22, 1999, for the Service Agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER99–2227–000]

Take notice that on March 19, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Delmarva Power & Light Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of March 19, 1999, the date of filing the Service Agreement.

Copies of the filing were served upon Delmarva Power & Light Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER99–2228–000]

Take notice that on March 23, 1999, Southwestern Public Service Company (Southwestern), tendered for filing proposed amendments to its rate schedule with Farmers' Electric Cooperative, Inc., a full requirements wholesale customer.

The amendment allows this customer to participate in the interruptible load program available to all of Southwestern's full requirements wholesale customers.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. California Power Exchange Corporation

[Docket No. ER99–2229–000]

Take notice that on March 23, 1999, California Power Exchange Corporation (Power Exchange), on behalf of soon-to-be established division (CalPX Trading Services, or CTS), tendered for filing with the Commission an application seeking Commission authorization to conduct a ''Block-Forward Market'' for the sales and purchases of energy for delivery through the Power Exchange Day Ahead Market, and seeking Commission treatment similar to that of an unaffiliated power marketer with respect to the Block-Forward Market. CTS also seeks various blanket waivers and authorizations similar to those customarily granted to power marketers.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER99–2230–000]

Take notice that on March 22, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Enserch Energy Services, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on March 22, 1999.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER99–2232–000]

Take notice that on March 23, 1999, Wisconsin Electric Power Company tendered for filing notice that effective sixty days from the date of filing, Service Agreement Nos. 2 and 23 under Wisconsin Electric Power Company's Coordination Sales Tariff, FERC Electric Tariff Original Volume No. 2 are to be canceled as a result of MidCon Power Services Corp. (MidCon) and Energy Masters International (EMI) f/k/a Cenergy, Inc., recent FERC filings stating they are no longer functioning as power marketers.

Copies of the filing have been served on MidCon, EMI, Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER99–2234–000]

Take notice that on March 23, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing an Agreement with Steuben Rural Electric Cooperative, Inc. (SREC), for facilities Agreement.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Aquila Energy Marketing Corp.

[Docket No. ER99–2235–000]

Take notice that on March 23, 1999, Aquila Energy Marketing Corporation (AEMC) and UtiliCorp United Inc. (UtiliCorp), on behalf of its Missouri Public Service (MPS) operating division, jointly filed a Unit Power Sales Agreement between AEMC and UtiliCorp (MPS) dated February 16, 1999.

Comment date: April 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8157 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–202–001, et al.]

MidAmerican Energy Company, et al.; Electric Rate and Corporate Regulation Filings

March 25, 1999.

Take notice that the following filings have been made with the Commission:

1. MidAmerican Energy Company

[Docket No. ER99–202–001]

Take notice that on March 22, 1999, MidAmerican Energy Company (MidAmerican), P.O. Box 657, 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing changes to its Open Access Transmission Tariff (OATT), for the purpose of complying with the Order Accepting For Filing, As Modified, Revisions To Open Access Tariff issued in this proceeding on February 25, 1999.

Copies of the filing were served on all customers having service agreements with MidAmerican under the OATT, the Iowa Utilities Board, the Illinois

Commerce Commission, the South Dakota Public Utilities Commission and all parties to this proceeding.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Electric & Gas Company

[Docket No. ER99–2105–000]

Take notice that on March 22, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing an amendment to the original filing establishing Tractebel Energy Marketing as a customer under the terms of SCE&G's Negotiated Market Sales Tariff. The service agreement inadvertently left out of the filing package was resubmitted and a request was made to amend the application filing to include this document.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this amendment request and the service agreement document were served upon Tractebel Energy Marketing and the South Carolina Public Service Commission.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER99–2212–000]

Take notice that on March 22, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), changes to its Cost-Based Power Sales Tariff, Original Volume No. 6 and its Market-Based Power Sales Tariff, Original Volume No. 7 to become effective March 22, 1999.

Cinergy Operating Companies respectively request that these changes to the Tariffs become effective on the date of this filing March 22, 1999.

Copies of the filing were served on parties to FERC Docket No. ER99–962–000, wholesale customers under the Tariffs, and the public service commissions of Indiana, Ohio and Kentucky.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Dayton Power and Light Company

[Docket No. ER99–2213–000]

Take notice that on March 22, 1999, Dayton Power and Light Company (Dayton) tendered for filing service agreements establishing Koch Energy Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Koch Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER99–2214–000]

Take notice that on March 22, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Mutual Netting/Closeout Agreements between PacifiCorp and ACN Power, Inc., Clark Public Utilities, Englehard Power Marketing, Flathead Electric Cooperative, Inc. & Energy Northwest, Inc., Koch Energy Trading, Inc., Merchant Energy Group of the Americas, Public Service Company of Colorado, and Tri-State Generation & Transmission Association Inc.

Copies of this filing were supplied the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER99–2215–000]

Take notice that on March 22, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the fully executed Generation Control, Storage, and Firm Power Supply Agreement between PacifiCorp and Eugene Water & Electric Board under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12. This agreement replaces the unexecuted agreement previously accepted for filing by the Commission.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER99–2216–000]

Take notice that on March 22, 1999, Florida Power Corporation (FPC), tendered for filing Amendment No. 2 to Contract for Interchange Service Between Florida Power Corporation and Seminole Electric Cooperative, Inc.

Florida Power requests that the amendment be accepted for filing to become effective on March 22, 1999.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER99–2217–000]

Take notice that on March 22, 1999, Southern California Edison Company (SCE), tendered for filing Amendment No. 2 (Amendment No. 2) to the Edison-Vernon 1997 Restructuring Agreement between SCE and the City of Vernon, California. Included in Amendment No. 2 as Attachment Nos. 1, 2 and 3 are: Amendment No. 3 to the Edison-Vernon Firm Transmission Service Agreement, Amendment No. 4 to the Edison-Vernon Mead Firm Transmission Service Agreement, and Amendment No. 3 to the Edison-Vernon Victorville-Lugo Firm Transmission Service Agreement.

Amendment No. 2 permanently converts the transmission loss methodology under existing transmission contracts to the Independent System Operator Tariff loss methodology.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. The Detroit Edison Company

[Docket No. ER99–2218–000]

Take notice that on March 22, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing forms of retail transmission service agreement under Detroit Edison's open access transmission tariff (the Detroit Edison Transmission Tariff) and the joint open access transmission tariff of Consumers Energy Company and Detroit Edison (the Joint Transmission Tariff). Detroit Edison submits these forms of service agreement for use in providing retail transmission service under the Detroit Edison Transmission Tariff and the Joint Transmission Tariff to retail electric customers and their designated agents taking retail service under Detroit Edison's Electric Choice retail access program.

Detroit Edison requests an effective date of the proposed forms of retail transmission service agreement of sixty days after the date of this filing.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER99–2220–000]

Take notice that on March 22, 1999, Wisconsin Electric Power Company, tendered for filing notice that hereby effective sixty days from date of filing, Service Agreement Nos. 7, 96 and 100, under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Original Volume No. 1, are to be canceled. The affected customers are IUC Power Services, Kimball Power Services, and Energy Masters, International.

Copies of the filing have been served on the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Electric & Gas Company

[Docket No. ER99–2221–000]

Take notice that on March 22, 1999, South Carolina Electric & Gas Company (SCE&G), tendered service agreements establishing Southern Company Energy Marketing, L.P. and Statoil Energy Trading, Inc., as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Southern Company Energy Marketing, L.P. and Statoil Energy Trading, Inc., and the South Carolina Public Service Commission.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER99–2222–000]

Take notice that on March 22, 1999, South Carolina Electric & Gas Company (SCE&G) tendered a service agreement for Firm Point-to-Point Transmission service establishing Southern Company Energy Marketing, L.P. as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Southern Company Energy Marketing, L.P. and the South Carolina Public Service Commission.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Great Bay Power Corporation

[Docket No. ER99–2223–000]

Take notice that on March 22, 1999, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Enserch Energy Services, Inc., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective March 17, 1999.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER99–2224–000]

Take notice that on March 22, 1999, New York State Electric & Gas Corporation (NYSEG), tender for filing an executed Network Service and Network Operating Agreements between NYSEG and two energy service companies participating in its retail access program. The energy service companies are Columbia Energy, Inc., and DukeSolutions, Inc. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG requests waiver of the Commission's 60-day notice requirements and an effective date for the Agreements of one day after the filing of the Service Agreements by NYSEG with the Commission. NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customers.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Central Vermont Public Service Corporation

[Docket No. ER99–2231–000]

Take notice that on March 22, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a service agreement with Merchant Energy Group of the Americas, Inc., under its FERC Electric Tariff No. 8

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on March 22, 1999.

Comment date: April 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8120 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–71–000, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

March 23, 1999.

Take notice that the following filings have been made with the Commission:

1. PJM Interconnection, L.L.C.

[Docket No. EL98–71–000]

Take notice that on March 16, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing an Amendment To Petition For Temporary Waiver Of Annual Charges.

Copies of this filing were served upon all members of PJM and the parties listed on the official service list compiled by the Federal Energy Regulatory Commission in this docket.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–884–000]

Take notice that on March 17, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing a request to withdraw its filing submitted in Docket No. ER99–884–000. Allegheny Power will not seek authorization at this time to include ancillary services in its cost-based generation tariff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corp. and Upper Peninsula Power Co.

[Docket No. ER99–2159–000]

Take notice that on March 17, 1999, Wisconsin Public Service Corporation (WPSC) and Upper Peninsula Power Company (UPPCo) tendered for filing a revised code of conduct between WPSC and UPPCo filed on March 15, 1999, in the above-referenced docket.

Comment date: April 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER99–2189–000]

Take notice that on March 16, 1999, Puget Sound Energy, Inc., tendered for filing notification of its withdrawal from the Northwest Regional Transmission Association effective immediately.

Comment date: April 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–2190–000]

Take notice that on March 18, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing amendments to Con Edison's FERC Electric Rate Schedule No. 1 which is Con Edison's Open Access Transmission tariff (OATT). The proposed modifications have been approved by the New York State Public Service Commission (PSCNY) in conjunction with Con Edison's retail access program.

Con Edison has requested that the Commission waive its prior notice and filing requirements so that the amendments can be effective on March 19, 1999.

Con Edison states that a copy of this filing has been served by mail upon the PSCNY, all parties that have executed service agreements under Con Edison's OATT, and all parties to PSCNY Case 96–E–0897.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–2191–000]

Take notice that on March 18, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing amendments to Con Edison's FERC Electric Rate Schedule No. 3 which is Con Edison's Retail Access tariff. Con Edison has requested that the Commission waive its prior notice and filing requirements so that these amendments can be effective on March 19, 1999.

Con Edison states that a copy of this filing has been served by mail upon the New York State Public Service Commission, parties to Con Edison's service restructuring proceeding before the New York State Department of Public Service and all parties that have executed agreements under Con Edison's Open Access Transmission Tariff.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Co.

[Docket No. ER99–2192–000]

Take notice that on March 18, 1999, Southern California Edison Company (SCE) tendered for filing a revision to Exhibit A, Specifications for Wholesale Distribution Service, to the Service Agreement for Wholesale Distribution Service with SCE's Generation Business Unit under the Wholesale Distribution Access Tariff.

Copies of the filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER99–2193–000]

Take notice that on March 18, 1999, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement with Dayton Power and Light Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER99–2194–000]

Take notice that on March 18, 1999, Florida Power & Light Company (FPL) tendered for filing a notice of cancellation of Service Agreement with the City of Starke, Florida, under FPL's FERC Electric Tariff, Third Revised Volume No. 1.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER99–2195–000]

Take notice that on March 18, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Notice of Termination of PacifiCorp's Rate Schedule FERC No. 312 with Nevada Power Company.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Valley Electric Corporation

[Docket No. ER99–2196–000]

Take notice that on March 18, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service, dated March 2, 1999 (the Service Agreement) between PG&E Energy Trading-Power, L.P. (PG&E Energy Trading) and OVEC.

OVEC proposes an effective date of March 2, 1999, and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to PG&E Energy Trading.

Copies of this filing were served upon the California Public Utilities Commission and PG&E Energy Trading.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas and Electric Corporation

[Docket No. ER99–2197–000]

Take notice that on March 18, 1999, Central Hudson Gas and Electric Corporation (CHG&E) tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations a Service Agreement between CHG&E and Tractebel Energy Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Otter Tail Power Company

[Docket No. ER99–2198–000]

Take notice that on March 18, 1999, Otter Tail Power Company (Otter Tail) tendered for filing with the Federal Energy Regulatory Commission its FERC Electric Rate Schedule, an application for blanket authorizations and for certain waivers of the Commission's Regulations. Otter Tail intends to engage in transactions in which Otter Tail sells electricity at rates and on terms and conditions that are negotiated with the purchasing party.

Otter Tail has requested expedited action on its filing so that the Commission may accept Otter Tail's rate schedule for filing to become effective as soon as possible.

Otter Tail has also served a copy of the application on the state utility commissions in which it provides retail electric service, the Minnesota Public Utilities Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8119 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–71–000, et al.]

Woodstock Hills, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 24, 1999.

Take notice that the following filings have been made with the Commission:

1. Woodstock Hills LLC

[Docket No. EG99–71–000]

Take notice that on March 22, 1999, Woodstock Hills LLC filed an amended Application for Determination of Exempt Wholesale Generator Status.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. FirstEnergy Operating Companies: The Cleveland Electric Illuminating Company; Ohio Edison Company; Pennsylvania Power Company; The Toledo Edison Company Transferors; American Transmission Systems, Inc., Transferee

[Docket No. EC99–53–000]

Take notice that on March 19, 1999, the FirstEnergy Operating Companies filed an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, for authorization to transfer ownership and operational control of their jurisdictional transmission facilities to American Transmission Systems, Inc. (ATSI). The applicants state that ATSI is a wholly-owned subsidiary of FirstEnergy Corp., and that ATSI does not currently own or operate any facilities subject to the jurisdiction of the Commission. The applicants state further that upon the grant of Commission authorization, ATSI will own and operate all transmission facilities of the FirstEnergy Operating Companies subject to the jurisdiction of the Commission, and will provide transmission services pursuant to the terms and conditions set forth in its own Open Access Transmission Tariff to be submitted in a separate filing under section 205 of the Federal Power Act, 16 U.S.C. 824d.

Comment date: April 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Sahacogen (Chonburi) Co. Ltd.

[Docket No. EG99–96–000]

Take notice that on March 18, 1999, Sahacogen (Chonburi) Co. Ltd. (Sahacogen) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sahacogen will acquire a 122 MW eligible facility located in Sriracha, Thailand. Sahacogen states that, following the close of the acquisition, it will be engaged directly and exclusively in the business of owning and/or operating all or part of an eligible facility (as defined in Section 32(a)(1) of the Public Utility Holding Company Act); selling electricity at wholesale to the Electricity Generating Authority of Thailand, a government corporation operating under the laws of Thailand; and at wholesale to Saha Pathana Inter-Holdings Plc., a Thai corporation, which will on-sell to industrial and commercial consumers in an industrial park in which the Facility is situated; and, possibly, selling electricity at retail to customers none of which will be located within the United States.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. UAE Lowell Power LLC

[Docket No. EG99–98–000]

Take notice that on March 19, 1999, UAE Lowell Power LLC (ULP) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

ULP is a Delaware Limited Liability Company which was organized

exclusively for the purpose of developing, owning, and operating an electric generating facility in Lowell, Massachusetts. ULP's facility is an 82 MW net capacity, gas-fired cogeneration facility. ULP states that no rate or charge in connection with this facility was in effect under the laws of any state as of October 24, 1992 or any time thereafter. ULP further states that copies of the application were served upon the Securities and Exchange Commission and the Massachusetts Department of Telecommunications and Energy.

Comment date: April 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Torco Energy Marketing, Inc.; INFINERGY Services, LLC

[Docket Nos. ER92–429–018 and ER98–3478–002]

Take notice that on March 15, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. J. Anthony & Associates Ltd; Electrion Incorporated

[Docket Nos. ER95–784–015 and ER98–3171–002]

Take notice that on March 17, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. Revelation Energy Resources Corporation

[Docket No. ER97–765–002]

Take notice that on March 16, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the Internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Zapco Power Marketers, Inc.; Tri-Valley Corporation; Industrial Gas & Electric Services Company; Enpower Inc.

[Docket Nos. ER98–689–004; ER97–3428–005; ER95–257–017; and ER95–1752–009]

Take notice that on March 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

9. DTE Edison America, Inc.

[Docket No. ER98–3026–002]

Take notice that on March 18, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

10. Reliable Energy, Inc.

[Docket No. ER98–3261–001]

Take notice that on March 19, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

11. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER99–2167–000]

Take notice that on March 15, 1999, the above-referenced public utilities filed their quarterly transaction report for the quarter ending December 31, 1998.

Comment date: April 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. EnergyChoice, LLC

[Docket No. ER99–2188–000]

Take notice that on March 17, 1999, EnergyChoice, LLC (EnergyChoice), tendered for filing notice that it became insolvent, terminated all operations and filed a final tax return for the year ending December 13, 1997.

EnergyChoice requests that the Commission cancel all applicable FERC rate schedules and remove EnergyChoice from the Commission's records and data base.

Comment date: April 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER99–2199–000]

Take notice that on March 19, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated March 18, 1999 with Statoil Energy Trading, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Statoil Energy Trading, Inc., as a customer under the Tariff.

DLC requests an effective date of March 18, 1999, for the Service Agreement.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Green Mountain Power Corporation

[Docket No. ER99–2200–000]

Take notice that on March 19, 1999, Green Mountain Power Corporation tendered for filing a Power Sales Agreement with Green Mountain Energy Resources, L.L.C.

Green Mountain requests an effective date of March 22, 1999.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consumers Energy Company

Docket No. ER99–2201–000

Take notice that on March 19, 1999, Consumers Energy Company (Consumers) tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, pursuant to Consumers' Open Access Transmission Service Tariff, with Delphi Energy and Engine Management Systems—Coopersville (Customer). The agreements have an effective date of March 15, 1999.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the Customer.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER99–2202–000]

Take notice that on March 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service

Agreement dated March 2, 1999 by KCPL. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for wholesale transactions. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of January 1, 2000.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Kansas City Power & Light Company

[Docket No. ER99–2203–000]

Take notice that on March 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 2, 1999 by KCPL. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for wholesale transactions. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of April 1, 1999.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Kansas City Power & Light Company

[Docket No. ER99–2204–000]

Take notice that on March 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing two Service Agreements dated March 2, 1999 by KCPL. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for wholesale transactions. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of June 1, 1999.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp

[Docket No. ER99–2205–000]

Take notice that on March 19, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Power Sales Agreement with Flathead Electric Cooperative, Inc., and Energy Northwest Inc., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. PacifiCorp

[Docket No. ER99–2206–000]

Take notice that on March 19, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Bigfork Output Power Sales Agreement with Flathead Electric Cooperative, Inc., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

PacifiCorp requests that the Commission grant a waiver of prior notice and accept for filing the enclosed Power Sales Agreement and assign an effective date of May 5, 1999.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Power & Light Company

[Docket No. ER99–2207–000]

Take notice that on March 19, 1999, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with Energy Transfer Group, L.L.C., Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of March 10, 1999, for these Agreements.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison Co.

[Docket No. ER99–2208–000]

Take notice that on March 19, 1999, Southern California Edison Company (SCE), tendered for filing a revision to Exhibit A, Specifications for Wholesale Distribution Service, to the Service Agreement for Wholesale Distribution Service between SCE–QF Resources and SCE Power Grid Business Unit under the Wholesale Distribution Access Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp

[Docket No. ER99–2209–000]

Take notice that on March 19, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, umbrella Service Agreements with ACN Power, Inc., Eugene Water & Electric Board, Morgan Stanley Capital Group Inc., Southern California Edison Company, and Utah Associated Municipal Power Systems under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12. In connection therewith, a Certificate of Concurrence by Southern California Edison Company was also tendered.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Company

[Docket No. ER99–2210–000]

Take notice that on March 19, 1999, New England Power Company (NEP), tendered for filing a Notice of Cancellation of the Unit Power Contracts between NEP and Hingham Municipal Lighting Plant, North Attleborough Electric Department, Middleton Electric Light Department and Groton Electric Light Department.

NEP requests that cancellation be effective on February 28, 1999.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER99–2211–000]

Take notice that on March 19, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Enserch Energy Services, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of March 18, 1999.

Copies of this filing were served upon Customer.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Geysers Power Company, LLC

[Docket No. ES99–35–000]

Take notice that on March 22, 1999, Geysers Power Company, LLC (Geysers Power) filed an application for authorization to issue securities and assume liabilities and motion for expedited consideration in connection with a leveraged lease financing of the Geysers geothermal generating facilities. Geysers Power requests the Commission to waive the 30-day notice period generally provided for in granting blanket authorization under Section 204 to permit Geysers Power to enter a sale leaseback financing transaction on April 30, 1999, or, in the alternative, to grant Geysers Power specific Section 204 authority to execute the sale leaseback financing transaction described in the Application on that date. Geysers Power also requests certain exemptions from and waivers of Sections 34.2 and 34.4 of the Commission's regulations.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8121 Filed 4–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

March 29, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* 372–008.

c. *Date filed:* June 12, 1998.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lower Tule River Hydrolectric Project.

f. *Location:* On the North and South Forks of the Middle Fork Tule River in Tulare County, California, partially within the boundaries of the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Wesley Moody, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302–1564.

i. *FERC Contact:* Nan Allen, Nan.Allen@ferc.fed.us, 202–219–2938.

j. *Deadline for filing scoping comments:* May 27, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The existing project consists of: (1) a 15-foot-high, concrete dam; (2) a 5-foot-high, rubble masonry dam; (3) a 31,802-foot-long flow line; (4) a 2,815-foot-long steel penstock; (5) a 3.37 acre-foot forebay; (6) a powerhouse containing two turbine-generator units with a total installed capacity of 2,520 kilowatts (kW); and (7) a 2,352-foot-long tailrace.

m. *Locations of the application:* A copy of the application is available for inspection or reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Tuesday, April 27, 1999
1:00 pm
Springville Veterans Memorial Building
35944 Highway 190
Springville, California

Evening Meeting

Tuesday, April 27, 1999
7:00 pm
Springville Veterans Memorial Building
35944 Highway 190
Springville, California

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit to the Lower Tule Project on Tuesday, April 27, 1999. We will meet at 9:00 am at the US Forest Service, Tule River Ranger District, 32588 Highway 190, Springville, California. Those who wish to attend should contact John W. Irwin,

909–394–8715 by Friday, April 23, 1999.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–8116 Filed 4-1–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed March 22, 1999 Through March 26, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990093, LEGISLATIVE FINAL EIS, UAF, AZ, Barry M. Goldwater Ranger (BMGR), Renewal of the Military Land Withdrawal, Yuma, Pima and Maricopa Counties, AZ, Due: May 03, 1999, Contact: Jack Bush (703) 604–0553.

EIS No. 990094, FINAL SUPPLEMENTAL, TVA, TN, Kingston Fossil Plant Alternative Coal Receiving Systems, New Rail Spur Construction near the Cities of Kingston and Harriman, Roane County, TN, Due: May 03, 1999, Contact: Harold M. Draper (423) 632–6889.

EIS No. 990095, LEGISLATIVE FINAL EIS, UAF, NV, Nellis Air Force Range (NAFR), Renewal of the Land Withdrawal to Provide a Safe and Secure Location to Test Equipment and Train Military Personnel, Clark, Lincoln and Nye Counties, NV, Due: May 03, 1999, Contact: Jack Bush (703) 604–0553.

EIS No. 990096, DRAFT EIS, USA, NJ, Military Ocean Terminal (MOTBY), Disposal and Reuse, Implementation, in the City of Bayonne, Bergen, Essex and Hudson Counties, NJ, Due: May 17, 1999, Contact: Theresa Persick-Arnold (703) 697–0216.

EIS No. 990097, FINAL EIS, DOE, AZ, Griffith Energy Project, Construction and Operation, 520-Megawatt (MW) Natural Gas-Fired and Combined Cycle Power Plant, Right-of-Way Grant, Operating Permit and COE Section 404 Permit, Kingman, AZ, Due: May 03, 1999, Contact: John Holt (602) 352–2692.

EIS No. 990098, DRAFT SUPPLEMENTAL, JUS, Programmatic EIS—U.S. Immigration and Naturalization Service (INS) and U. S. Joint Task Force-Six (JTF–6) Implementation, Construction and Operation of Integrated Surveillance Intelligence System Project (ISIS) and Drug Law Enforcement Agencies (DLEA), Continental U.S., TX, NM, AZ, CA, Due: May 17, 1999, Contact: Eric Verwers (817) 978–0202.

Amended Notices

EIS No. 990081, DRAFT EIS, UAF, LA, TX, NM, Realistic Bomber Training Initiative, Improve the B–52 and B–1 Aircrews Mission Training and Maximize Combat Training Time, Barksdale Air Force Base, La, NM and TX , Due: June 16, 1999, Contact: Major Brent Adams (915) 696–2863. Published FR–03–19–99 Review Period Extended.

Dated: March 30, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–8182 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 8, 1999 through March 12, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–B65005–NH Rating EC2, Appalachian Mountain Club (AMC) Huts and Pinkham Notch Visitor Center (PNVC) Continued Operations, Special Use Permit and Possible COE Permit Issuance, White Mountain National Forest, Grafton and Coos Counties, NH.

Summary: EPA expressed environmental concerns with regard to the analysis of impacts to water supply, ground water and wetlands and asked that those issues be addressed in the final EIS in order to fully evaluate the environmental acceptability of the proposed project.

ERP No. D–AFS–B65008–VT Rating EC2, Mount Snow/Haystack Resort, Expansion of Snowmaking Coverage and Development of Alternative Water Supplies, Special-Use-Permit and COE Section 404 Permit, Green Mountain National Forest, Manchester Ranger District, Windham County, VT.

Summary: EPA expressed environmental concerns pertaining to water quality impacts and asked for a more complete discussion of cumulative effects associated with the development of the proposed snowmaking infrastructure. EPA supported the proposed changes that would bring existing water withdrawals in line with established flow criteria and encouraged the Forest Service to use the comments on the DEIS to frame discussions about modifications to the existing water withdrawal settlement agreement.

ERP No. D–AFS–J65217–UT Rating EC2, Brighton Ski Resort Master Development Plan Updated, Implementation, Wasatch-Cache National Forest, Salt Lake City, UT.

Summary: EPA expressed environmental concerns from based primarily on the need for identifying potential adverse impacts to wetlands resources from snow storage. The final EIS should include additional mitigation measures to reduce impacts to the aquatic ecosystem.

ERP No. D–AFS–J65293–MT Rating EC2, Taylor Fork Timber Sale and Road Restoration, Implementation, Buck Creek, Taylor Fork Creek and Eldridge Creek, Gallatin National Forest, Madison Ranger, Hebgen Lake Ranger District, Yellow Stone, Gallatin County, MT.

Summary: EPA expressed environmental concerns due to lack of information regarding wetlands, existing watershed conditions, and potential impacts to westslope cutthroat trout.

ERP No. D–AFS–J65298–CO Rating EC2, South Fork Salvage Analysis Area, Implementation, Routt Divide Blowdown, Land and Resource Management Plan, Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Rounty County, CO.

Summary: EPA expressed environmental concerns and requested information on impacts from road reconstruction actions and identification of any roads in Streamline Management Zones (SMZs).

ERP No. D–AFS–L61218–ID Rating EC2, Frank Church—River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID.

Summary: EPA expressed environmental concerns related to the potential adverse of using herbicides to manage noxious weeds in wilderness areas.

ERP No. D–AFS–L65313–ID Rating EC2, Silver Creek Integrated Resource Project, Implementation, Middle Fork Payette River, Boise National Forest, Boise and Valley Counties, ID.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality, air quality and wilderness habitat.

ERP No. D–AFS–L65314–OR Rating EO2, Mill Creek Watershed Timber Sales Project, Implementation, Ochoco National Forest, Crook County, OR.

Summary: EPA expressed environmental objections with the proposed alternative and with potential adverse impacts to water quality, wildlife and riparian conservation areas.

ERP No. D–AFS–L65315–ID Rating EO2, West Fork Potlatch Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Palouse Ranger District, Latah County, ID.

Summary: EPA expressed environmental concerns related to the lack of an adequate water quality analysis, impacts associated with road construction, and the failure to treat the Potlatch basin as a key watershed. EPA recommends that the Forest Service consider the value of withdrawing the EIS and issuing a revised document.

ERP No. D–AFS–L65320–00 Rating EC2, Targhee National Forest Open Road and Open Motorized Trail Analysis, To Implement a new Travel Plan, several counties, ID and Lincoln and Teton Counties, WY.

Summary: EPA expressed environmental concerns with potential impacts to water quality, cutthroat trout, canada lynx and their habitat.

ERP No. D–BLM–K65214–AZ Rating EC2, Dos Pobres/San Juan Mining Plan and Land Exchange, Implementation of two Open Pit Copper Mines and one Central Ore Facility, NPDES and COE Section 404 Permits, Graham County, AZ.

Summary: EPA expressed environmental concerns over potential impacts to air resources, water resources and quality, and water-related biologic resources. EPA expect that additional mitigation measures of clarification of planned mitigation and monitoring, and inclusion of other additional requested information in the Final EIS may alleviate or reduce these concerns. EPA level of concern over potential impacts to air and water resources has also been raised by the physical magnitude and potential long time line of the Proposed Action.

ERP No. D–NPS–L61222–WA Rating LO, Lake Roosevelt National Recreation Area, General Management Plan, Implementation, Ferry, Grant, Lincoln, Okanogan and Stevens Counties, WA.

Summary: EPA had no objection to the preferred alternative. EPA did request further discussion about how the Lake Roosevelt Management Agreement affects development of a new plan; the effect of lake level fluctuations on recreation facilities: water resources; geology; and sustain ability.

Final EISs

ERP No. F–AFS–K65176–CA Sequoia National Forest Trail System Plan, Implementation, Amendment to the Sequoia National Forest Land and Resource Management Plan, Fresno, Kern and Tulare Counties, CA.

Summary: EPA expressed environmental concerns with the final plan. Elements of the plan may conflict the moratorium on construction in road-less areas, and the Clean Water Action Plan, and EPA requested that the Forest Service suspend evaluation and construction of new motorized trails pursuant to the Forest Plan amendment pending the release or the Forest Service's long-term transportation policy and the completion of the Sierra Nevada Forest Plan Amendment NEPA process.

ERP No. F-BLM-L61219-AK Squirrel River Wild and Scenic River Suitability Study, Designation and Non-Designation, National Wild and Scenic Rivers System, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-NPS-E61038-TN Stones River National Battlefield General Management Plan and Development Concept Plan, Implementation, Ruthford County, TN.

Summary: EPA recommends that new building construction and renovations meet energy efficiency strategies, as outlined in the American Society for Heating, Refrigeration and Air Conditioning Efficiency guidelines. Any contractors working in the Stones River floodplain should be required to conform to ''Floodplain Management Guidelines'', which were issued as NPS ''Special Directive 93–4'' in 1993.

Dated: March 30, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–8183 Filed 4–1–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00592; FRL–6073–2]

EPA-USDA Tolerance Reassessment Advisory Committee: Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA-U.S. Department of Agriculture (USDA) Tolerance Reassessment Advisory Committee (TRAC) will hold a meeting of Workgroup II to discuss the status of the organophosphate pilot process and transition strategies. On April 27–28, 1999, the TRAC ''Full Committee'' will meet to provide status reports on recent policy developments, organophosphate risk assessments and refinements, the overall status of tolerance reassessments, and transition strategies. TRAC was established in 1998 as a

subcommittee under the auspices of the EPA National Advisory Council for Environmental Policy and Technology (NACEPT) in response to Vice President Gore's request for EPA and the USDA to work together to ensure implementation of the Food Quality Protection Act (FQPA).

DATES: The TRAC Workgroup II meeting will be held on Thursday April 8, 1999, from 9:00 a.m.–5:30 p.m., and Friday, April 9, 1999, from 9:00 a.m. to 3:00 p.m.

The TRAC ''Full Committee'' meeting will be held on Tuesday April 27, 1999, from 9:00 a.m. to 5:30 p.m., and Wednesday, April 28, 1999, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The TRAC Workgroup II will be held on April 8–9 at the Ramada Plaza Hotel Old Town, 901 N. Fairfax Street, Alexandria, VA (703–683–6000).

The TRAC ''Full Committee'' meeting will be held on April 27–28, 1999, at the National Rural Electric Cooperative Association Conference Center, 4301 Wilson Blvd., Arlington, VA (703–907–5934; across from Ballston Metro stop).

The official record is available in the Docket for inspection during normal business hours, Monday-Friday, excluding Federal holidays, at the Office of Pesticide Program, U.S. Environmental Protection Agency, Crystal Mall 2 (CM 2,) Rm. 101, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: 703–305–5805.

FOR FURTHER INFORMATION CONTACT: By Mail: Margie Fehrenbach or Terria Northern, Office of Pesticide Programs (7501–C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location, telephone number and e-mail address: CM 2, Rm. 1119, 1921 Jefferson Davis Highway, Arlington, VA; telephone number 703–305–7090; e-mail addresses: Fehrenbach.Margie@epa.gov or Northern.Terria@epa.gov.

SUPPLEMENTARY INFORMATION: The Food Quality Protection Act (FQPA) (Pub. L. 104–170) was passed in 1996. This new law strengthens the nation's system for regulating pesticides on food. The TRAC was established by EPA and USDA to provide policy guidance on sound science, ways to increase transparency in decision-making, strategies for a reasonable transition for agriculture and ways to enhance consultations with stakeholders, as pesticide tolerances are reassessed, including those for organophosphates.

The TRAC is co-chaired by EPA Acting Deputy Administrator Peter Roberston and USDA Deputy Secretary Richard Rominger. The TRAC is a diverse group of stakeholders representing a broad range of interests, including farmers and growers; environmental and public interest groups; public health officials; pediatric experts; pesticide companies and trade associations; food processors and distributors; academicians; Federal agencies; tribal, State and local governments.

The TRAC meetings are open to the public under section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463. Outside statements will be limited to 3–5 minutes by each person or organization. Any person who wishes to file a written statement may do so before or after a TRAC meeting. These statements will become part of the official record and will be provided to the TRAC members. The official record will be available for public inspection at the address listed under **ADDRESSES** at the beginning of this document.

An agenda and background information are being developed and will be posted on the Agency's website one week prior to each meeting at: http://www.epa.gov/pesticides/trac.

List of Subjects

Environmental protection, Agriculture, Chemical, Foods, Pesticides and pests.

Dated: March 26, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–8235 Filed 3-31-99; 12:41 pm]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Petition No. P2–99]

In Re: Request that the Commission Issue Section 15 Orders to the Members of the Transpacific Stabilization Agreement; Notice of Filing of Petition

Notice is given that a petition requesting the Commission to issue a section 15 order to the members of the Transpacific Stabilization Agreement has been filed by the Coalition for Fair Play in Ocean Shipping. Members of the Coalition are alleged to be currently negotiating service contracts in the Far East in-bound trade lanes for the shipping season commencing May 1, 1999, and are asking the Commission to seek certain information through section 15 order. Petitioner claims that TSA warrants oversight during the negotiating period for the 1999 shipping season.

Interested persons are requested to reply to the petition no later than April 9, 1999. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for Petitioner, Carlos Rodriguez, Esq., Carlos Rodriguez & Associates, 1710 Rhode Island Avenue, NW., Washington, DC 20036.

Copies of the petition are available for examination at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW, Room 1046, Washington, DC.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–8111 Filed 4–1–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. MHBC Investments Limited Partnership, Little Rock, Arkansas; to become a bank holding company by acquiring at least 57 percent of the

voting shares of Bank of England, England, Arkansas.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BOK Financial Corporation, and Park Cities Bancshares, Inc., both of Tulsa, Oklahoma; to acquire 100 percent of the voting shares of Mid-Cities Bancshares, Inc., and thereby indirectly acquire Mid-Cities National Bank, both of Hurst, Texas.

Board of Governors of the Federal Reserve System, March 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8105 Filed 4–1–99; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Republic Bancorp, Inc., Grand Rapids, Michigan; to acquire D & N Financial Corporation; D & N Bank; D & N Capital Corporation; and D & N Mortgage Corporation, all of Hancock, Michigan; and thereby engage in operating a savings association pursuant to § 225.28(b)(4)(ii) of Regulation Y; extending credit and servicing loans pursuant to § 225.28(b)(1) of Regulation Y; and activities related to extending credit pursuant to § 225.25(b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, March 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8106 Filed 4–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, April 7, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8184 Filed 3–31–99; 10:42 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT), April 12, 1999.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 8, 1999, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of Arthur Andersen annual financial audit:

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

John J. O'Meara,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–8176 Filed 3–31–99; 10:42 am]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Transaction No.	ET req status	Party name
02–MAR–99	19991466	G	Vodafone Group Public Limited Company
		G	Air Touch Communications, Inc.
		G	Air Touch Communications, Inc.
	19991490	G	Curtis L. Carlson
		G	Westdeutsche Landesbank Girozentrale
		G	Thomas Cook Holdings, Limited
	19991509	G	John J. Rigas
		G	Gannett Co., Inc.
		G	Multimedia Telecommunications, Inc.
	19991524	G	Asbury Automotive Group, L.L.C.
		G	George R. Francis
		G	Damerow Ford Co.
	19991544	G	Republic Industries, Inc.
		G	Eugene Calabrese
		G	DisposAll, Inc. of Orlando
		G	All Rite Recycling, Inc.
		G	DisposAll, Inc. of Polk
		G	DisposAll, Inc. & Tampa Service, Inc.
		G	Metro Recycling, Inc.
	19991587	G	K-V Pharmaceutical Company
		G	American Home Products Corporation
		G	American Home Products Corporation
	19991602	G	Bayer AG
		G	DSM N.V.
		G	DSM Engineering Plastic Products, Inc.
	19991640	G	Joyce Johnson-Miller
		G	Kanematsu Corporation
		G	Diemakers, Inc.
03–MAR–99	19990962	G	BBA Group, PLC
		G	AMR Corporation
		G	AMR Combs, Inc.
	19991432	G	Tele-Communications, Inc. or (AT&T Corp.)
		G	SBC Communications, Inc.
		G	Pacific Bell
	19991584	G	Supreme International Corporation
		G	The PEI Trust
		G	Perry Ellis International, Inc.
	19991639	G	Nokia Corporation
		G	Diamond Lane Communications Corporation
		G	Diamond Lane Communications Corporation
	19991645	G	Audio Book Club, Inc.
		G	Reinhard Mohn
		G	Doubleday Direct, Inc.
	19991668	G	Ritchie Bros. Auctioneers Incorporated
		G	Forke, Inc.
		G	Forke, Inc.
05–MAR–99	19983918	G	Medtronic, Inc.
		G	Avecor Cardiovascular Inc.
		G	Avecor Cardiovascular Inc.
	19991171	G	Bowthorpe plc
		G	Wireless Telecom Group, Inc.
		G	Wireless Telecom Group, Inc.
	19991623	G	MDC Communications Corporation
		G	Colle & McVoy, Inc. Employee Stock Ownership Tru
		G	Colle & McVoy, Inc.
	19991641	G	Summer M. Redstone
		G	Capitol Entertainment of Prince William County, Inc.
		G	Capitol Entertainment of Northern Virginia, Ltd.
		G	Capitol Entertainment Video, Ltd.
	19991808	G	Grupo Industrial Bimbo, S.A., de C.V.
		G	Four-S Employee Stock Ownership Trust
		G	Four-S Baking Company
08–MAR–99	19991443	G	American Oncology Resources, Inc.
		G	Physician Reliance Network, Inc.
		G	Physician Reliance Network, Inc.
	19991650	G	Barry L. MacLean
		G	JPE, Inc.
		G	Industrial & Automotive Fasteners, Inc.
09–MAR–99	19991378	G	Vivendi S.A.
		G	Stanley M. Herzog
		G	Herzog Transit Services, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
	19991400	G	The Southern Company
		G	Consolidated Edison, Inc.
		G	Consolidated Edison of New York, Inc.
	19991572	G	Wells Fargo & Company
		G	Metapath Software International, Inc.
		G	Metapath Software International, Inc.
	19991576	G	O. Bruton Smith
		G	Launa White Crocker
		G	Sam White Corp., Sam White's Motor City, Inc.
		G	SWI–RE Holdings, Inc.
	19991598	G	Monitronics International, Inc.
		G	BankOne Corporation
		G	Dealers Monitoring Acquisition, L.P.
	19991608	G	The Allstate Corporation
		G	Dennis Berman
		G	Denitech Corporation
		G	Texas Business Systems
		G	Denitech Fort Worth, Inc.
	19991620	G	Ford Motor Company
		G	Charles Gilchrist
		G	Southwest Ford, Inc.
	19991649	G	Georgia-Pacific Corporation
		G	Carl M. Tucker, III
		G	C.M. Tucker Lumber Corporation of North Carolina
	19991652	G	The Dow Chemical Company
		G	Illinois Foundation Seeds, Inc.
		G	Illinois Foundation Seeds, Inc.
	19991656	G	Electra Investment Trust PLC
		G	Inchcape PLC
		G	Inchcape Shipping Services, Inc.
	19991657	G	Highfields Capital II LP
		G	Reynolds Metals Company
		G	Reynolds Metals Company
	19991658	G	Highfields Capital I LP
		G	Reynolds Metals Company
	19991658	G	Reynolds Metals Company
	19991659	G	Highfields Capital Ltd.
		G	Reynolds Metals Company
		G	Reynolds Metals Company
	19991671	G	Vornado Operating Company
		G	Steven Roth
		G	AmeriCold Logistics, LLC
		G	AmeriCold Logistics, II, LLC
		G	URS Logistics, Inc.
		G	AmeriCold Services Corporation
	19991675	G	Meyer Luskin
		G	Darling International Inc.
		G	International Processing Corporation
		G	International Transportation Services, Inc.
	19991676	G	RailWorks Corporation
		G	Frank & Victoria Marrazzo
		G	F&V Metro Contracting Corp.
	19991677	G	John P. Miller
		G	David P. Bornhoeft
		G	Columbia Graphics Corporation, an Illinois Corporation
	19991678	G	Philip F. Anschutz
		G	Roy M. Speer
		G	RMS Limited Partnership
		G	Speer Productions Limited Partnership
		G	Speer Virtual Media Limited Partnership
		G	Speer Communication Holding Limited Partnership
		G	Speer World Wide Digital Limited Partnership
		G	Professional Video Services Corporation
		G	Enhanced Services of Nevada, Inc.
		G	Innovative Holding Corporation (''IHC'')
	19991685	G	Madison Dearborn Capital Partners II, L.P.
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
	19991686	G	Royce J. Holland
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
	19991687	G	Frontenac VII Limited Partnership
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
	19991688	G	Battery Ventures IV, L.P.
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
	19991694	G	JR Shaw
		G	Terayon Communication Systems, Inc.
		G	Terayon Communication Systems, Inc.
	19991695	G	Unitrin, Inc.
		G	Fund America Enterprises Holdings, Inc.
		G	Valley Group, Inc.
	19991696	G	Amazon.com, Inc.
		G	drugstore.com Inc.
		G	drugstore.com Inc.
	19991697	G	Morgan Stanley Capital Partners III, L.P.
		G	Allegiance Telecom, Inc.
		G	Allegiance Telecom, Inc.
	19991703	G	Pfizer, Inc.
		G	Cardinal Health, Inc.
		G	R.P. Scherer Corporation
	19991705	G	Richard J. Kostyra
		G	Snyder Communications, Inc.
		G	Snyder Communications, Inc.
	19991709	G	Anthony L. Soave
		G	Horst Schwab
		G	Aristocrat Motor Company, Inc.
	19991710	G	John C. Snyder
		G	Santa Fe Energy Resources, Inc.
		G	Santa Fe Energy Resources, Inc.
	19991714	G	Kleiner Perkins Caufield & Byer VIII, L.P.
		G	drugstore.com Inc.
		G	drugstore.com Inc.
	19991718	G	The Williams Companies, Inc.
		G	Atlantic Richfield Company
		G	Union Texas Petrochemicals Corporation
10–MAR–99	19991166	G	AT&T Corp./Tele-Communications, Inc.
		G	International Business Machines Corporation
		G	International Business Machines Corporation
	19991624	G	Waste Connections, Inc.
		G	Wesley J. Hickey
		G	Management Environmental National, Inc., RH Financial Corp.
	19991689	G	The SKM Equity Fund II, L.P.
		G	Gary J. Buehler
		G	Certified Fabricators, Inc.
		G	Certified Design, Inc.
	19991727	G	WInd Point Partners III, L.P.
		G	The Ross-Willoughby Company
		G	The Ross-Willoughby Company
	19991730	G	Health Management Associates, Inc.
		G	Methodist Healthcare
		G	Methodist Healthcare—Jackson Hospitals
	19991733	G	Aurora Equity Partners II L.P.
		G	Madison A. Self
		G	Tioga International, Inc.
	19991736	G	ONEOK, Inc.
		G	Texaco Inc.
		G	Texaco Exploration and Producing Inc.
		G	Getty Gas Gathering, Inc.
	19991741	G	CSM nv
		G	Frank A. Serio & Sons, Inc.
		G	Frank A. Serio & Sons, Inc.
	19991742	G	Bacou, S.A.
		G	Frank A. Stucke
		G	Perfect Fit Glove Co., Inc.; SCHAS Circular Industries Inc.
	19991744	G	Entergy Corporation
		G	BEC Energy
		G	Boston Edison Company
	19991745	G	Ingersoll-Rand Company
		G	Harrow Industries, Inc.
		G	Harrow Industries, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
	19991748	G	ABRY Broadcast Partners, III, L.P.
	19991748	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Capstar Broadcasting Corporation
	19991749	G	kSecuritas AB
		G	Pinkerton's Inc.
		G	Pinkerton's Inc., a Delaware corporation
	19991753	G	General Electric Company
		G	Metamor Worldwide, Inc.
		G	Metamor Worldwide, Inc.
	19991754	G	Metamor Worldwide, Inc.
		G	General Electric Company
		G	General Electric Capital Consulting, Inc.
	19991755	G	Madison Dearborn Capital Partners II, L.P.
		G	Family Christian Stores, Inc.
		G	Family Christian Stores, Inc.
	19991756	G	AT&T Corp.
		G	SmarTalk TeleServices, Inc.
		G	SmarTalk TeleServices, Inc.
	19991757	G	Core Laboratories, N.V.
		G	Tech-Sym Corporation
		G	GeoScience Corporation
	19991758	G	Tech-Sym Corporation
		G	Core Laboratories, N.V.
		G	Core Laboratories, N.V.
	19991760	G	Golder, Thomas, Cressey, Rauner Fund V, L.P.
		G	Frank J. Hammant, Jr., and Mary Youngblood Hamm
		G	Mayer-Hammant Equipment, L.L.C.
	19991772	G	Spartan Stores, Inc.
		G	Donald J. Koop
		G	Family Fare, Inc., Family Fare Management Service
		G	Family Fare Trucking, Inc.
11–MAR–99	19991542	G	McLeodUSA Incorporated
		G	Media/Communications Partners III Limited Partners
		G	Ovation Communications, Inc.
	19991543	G	Media/Communications Partners III Limited Partners
		G	McLeodUSA Incorporated
		G	McLeodUSA Incorporated
	19991560	G	Paul G. Allen
		G	Providence Equity Partners, L.P.
		G	American Cable Entertainment Co., LLC
12–MAR–99	19991614	G	Advance Paradigm, Inc.
		G	Foundation Health Systems, Inc.
		G	Foundation Health Systems, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–8152 Filed 4–1–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Move Management Services (MMS) and the General Services Administration's (GSA's) Centralized Household Goods Traffic Management Program (CHAMP)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of proposed program changes for comment.

SUMMARY: This notice invites comments on GSA's ''draft'' Statement of Work (SOW) for use in transitioning MMS, by October 31, 1999, from CHAMP to the Governmentwide Employee Relocation Services Schedule as a separate line item. The transition will occur during a continuous open season instituted on March 1, 1999 for the schedule. This notice also addresses comments received on a more general July 17, 1998 **Federal Register** notice GSA published on this subject (63 FR 38653). Under the transition plan GSA will continue to be able to meet customer household goods service needs while shifting MMS to a Federal Acquisition Regulation (FAR) contract procurement method.

DATES: Please submit your comments by May 3, 1999.

ADDRESSES: Mail comments to the Transportation Management Division, (FBF), General Services Administration, Washington, DC 20406, Attn: **Federal Register** Notice. GSA will consider your comments prior to implementing these proposals.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Senior Program Analyst, Transportation Management Division, FSS/GSA, 703–305–5745.

SUPPLEMENTARY INFORMATION: GSA published a notice for comment in the **Federal Register** on July 17, 1998 (63 FR 38653) announcing its plan to transition MMS from CHAMP to the Governmentwide Employee Relocation Services Schedule. GSA fully expected to transition MMS to the schedule as a separate line item at the beginning of a continuous open season that began on March 1, 1999. We determined, however, that it would better serve the interests of all affected parties to first allow another comment period on transition details before adding MMS to the schedule. The draft SOW provides these details and was posted on February 19, 1999, to GSA's website for you to review and comment on in response to this notice. You may access the SOW at the following GSA website address: http://r6.gsa.gov/fsstt/.

GSA received comments on the July 17th **Federal Register** notice from a carrier association, two individual carriers, and two representatives of third party MMS providers. We have carefully considered those comments in further developing our MMS transition plan and drafting the SOW. The comments we received fall within several general groupings and are addressed as follows.

Underlying Basis for Transitioning MMS to the Schedule

One respondent questioned the legal basis for GSA's decision to transition MMS from CHAMP to the Governmentwide Employee Relocation Services Schedule. The basis for our decision derives from the statute that authorizes transportation service providers to transport household goods for the U.S. Government at a rate reduced from the applicable commercial rate (49 U.S.C. 13712). This statute provides that only a carrier or freight forwarder may provide such transportation outside a FAR procurement—a ''broker'' does not meet the definition of carrier or freight forwarder for purposes of this statute (see 49 U.S.C. 13702). Additionally, not all move management services inherently fall within the scope of providing transportation services (as addressed in greater detail below), and it is not appropriate for these services to remain indefinitely in CHAMP. Abrupt removal of MMS from CHAMP, however, would have negatively impacted the operations of some Federal activities since they have come to rely on these services. We therefore developed the approach announced in the **Federal Register** to allow for the orderly transitioning of MMS from CHAMP to the Governmentwide Employee Relocation Services Schedule.

As a first step in initiating the transition, GSA asked current Relocation Services Schedule vendors to submit offers to provide MMS as part of their bundled relocation services. The next step will be to afford all qualified MMS providers opportunity to compete under a uniform set of criteria for provision of MMS as an unbundled (separate) service under the continuous open season for the schedule. The open season for real estate associated relocation services offered under the schedule began on March 1, 1999, and MMS will be added as a separate line item as soon as we receive and reconcile comments on this **Federal Register** notice.

Many agencies wish to purchase MMS independently of other bundled relocation services and want a wide choice of service providers.

Service Fees

Several respondents addressed fee issues, among them pricing of services under the schedule including whether the factoring of line-haul charges into the pricing will be permitted, as well as payment of commissions to a carrier and whether such payments constitute a ''kickback''.

MMS will be offered under the schedule on a flat fee basis and will not include line-haul transportation because of the associated difficulties of determining price reasonableness. The schedule will not address commissions, a common commercial practice between a carrier and a broker.

Concerning whether commissions constitute a kickback, the General Accounting Office's analysis in its PHH Homequity Corporation decision (B–240145.3; B–241988, February 1, 1991) placed a great deal of emphasis on the value of the services a broker performs compared to the size of the broker's commission. While the utility of such an analysis may be arguable, it is not the definitive analysis on what constitutes a kickback under the Anti-Kickback Act of 1986.

Commissions, per se, do not constitute a kickback, and they occur in many different instances of GSA procurements. For example, GSA's contractor-issued charge card program involves a commission paid by a merchant to the bank that administers the charge card, and GSA's Travel Management Center program involves a commission paid by an airline to the travel agent. In neither instance does the commission paid constitute a kickback because the selection of the subcontractor paying the commission is based on criteria unrelated in any way to the size of the commission payment. Once it is established that a commission is not a kickback, there is no need to determine whether the subcontractor is satisfied by the commercial transaction, or to perform any complicated analysis of the value of the work performed by the contractor vis-a-vis the amount of the commission.

GSA Nonmandatory Supply Source for Transportation Services

One respondent expressed particular concern that GSA-issued regulations do not correctly reflect GSA's status as a nonmandatory source for transportation services. GSA's Office of Governmentwide Policy currently is processing a regulatory change for issuance in the near future to reflect our status as a nonmandatory source. Because GSA no longer is a mandatory source, in designing and developing transportation programs for the Federal community, we must weigh customer requirements, cost reasonableness, and quality service. The services we offer must not only meet customer needs but also provide value and exceed quality expectations. Consequently, although we support the use of commercial best practices to the maximum extent possible, it is necessary for us to require the use of CHAMP participating carriers under the schedule. The schedule nevertheless will permit an MMS provider to use a commercial rate arrangement it has with a carrier if the arrangement results in a cost advantage to the shipping agency and provides the agency and the relocating employee CHAMP-equivalent benefits and protections, including cargo liability insurance/performance bond protections.

Designation of Certain Services as Either an MMS or a General Transportation Activity

Three carrier respondents took issue with certain services historically provided by carriers as part of their routine transportation activities also qualifying as move management services when performed by an MMS provider. The cited activities associated with arranging and executing a household goods move are administrative in nature and may be performed by either. Some GSA customers are satisfied with carriers providing the services. Others, however, wish to disengage themselves from managing the services and delegate the responsibility to a third party. Services described in the draft SOW that may be provided by either are: carrier selection, shipment booking; storage in transit (SIT) arranging/monitoring; management information reports;

customer service; employee pre-move counseling; preparation of shipment documentation; on-site quality control service (at additional cost if provided by carrier); and claims preparation, filing, and settlement assistance. However, service performance audit and carrier evaluation would create a conflict of interest situation if performed by a carrier and must be performed by an MMS provider.

Meetings Re: MMS

A third party MMS provider respondent suggested that GSA officials have met privately with carrier industry groups and subsequently made decisions that advantaged carriers and disadvantaged third party MMS providers. The respondent recommended that future meetings be all inclusive. The respondent also stated that GSA has tended to announce significant program changes without consulting with all groups involved and recommended GSA involve affected parties earlier in the change process.

GSA's Transportation Management Division has met with third party providers as well as with representatives from the carrier industry. While we consider all input we do not permit meetings with individual groups to drive our program decisions. In the future, however, we will include all affected parties in industry meetings held for the purpose of discussing MMS program-related issues. We also will continue to publish proposed program changes in the **Federal Register** for comment by interested parties.

Appropriateness of Transition Plan

Without having the benefit of transition details contained in the draft SOW incorporated by reference in this notice, all respondents expressed in varying degrees reticence to the transition plan. GSA believes the phased transition plan we have developed is a fair one. Under this plan the current Domestic Household Goods Tender of Service will remain in effect until October 31, 1999, and all MMS providers will have opportunity to compete under a uniform set of criteria for providing MMS as a separate service under the relocation schedule.

GSA appreciates the interest demonstrated in our July 17th **Federal Register** notice through the comments we received, and we look forward to continued partnership with our customers and service providers as we endeavor to mold our household goods program into a model for the future.

Dated: March 25, 1999.

Barbara Vogt,

Deputy Assistant Commissioner, Office of Transportation and Property Management.

[FR Doc. 99–8156 Filed 4–1–99; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0438]

Food Code Prohibition Against Bare Hand Contact With Ready-to-Eat Foods; Preparation of a White Paper for Review by the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a request for scientific data and information to aid in the development of a white paper, or summary of current information, on the contamination of ready-to-eat foods associated with food preparation employees. FDA will present the white paper to the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) for its review and recommendations. FDA is seeking NACMCF input on this food contamination issue at the request of the Conference for Food Protection (CFP).

DATES: Submit data and information by June 1, 1999.

ADDRESSES: Submit written data and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John J. Guzewich, Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–3847.

SUPPLEMENTARY INFORMATION:

I. Background

FDA provides assistance to local, State, and Federal governmental bodies to ensure that the food that is provided to consumers by retail food establishments is not a vehicle of communicable diseases. One mechanism for providing that assistance is the publication entitled *Food Code 1999* (1999 Food Code), which provides guidance on food safety, sanitation, and fair dealing that can be uniformly adopted by jurisdictions for regulating the retail segment of the food industry. The 1999 Food Code, which is published by FDA, is the cumulative result of the efforts and recommendations of many contributing individuals, agencies, and organizations, and it is developed under the auspices of the CFP.

The CFP, which is an organization of government, industry, consumer, and academic members, meets every 2 years to discuss retail food safety issues and to make recommendations on changes to be made to the 1999 Food Code. Delegates of State regulatory agencies vote on these recommendations that, if passed, are shared with organizations interested in amending or adopting the code. Recommendations with which FDA concurs are incorporated in the following year's edition of the Food Code.

In the 1998 CFP meeting, a number of issues were submitted for the CFP's consideration regarding section 3–301.11 of the 1999 Food Code, entitled ''Preventing Contamination from Hands.'' Section 3–301.11 states, in part, that ''food employees may not contact exposed, ready-to-eat food with their bare hands.'' The 1999 Food Code contains: A prohibition against ill or infected employees preparing food, a hand-washing regimen, and a blanket prohibition against bare hand contact with ready-to-eat foods in order to ensure that the person-to-food fecal-oral transmission cycle is broken.

Section 3–301.11 was added to the 1999 Food Code some years ago in response to outbreaks of food-borne illness caused by food that had been contaminated with pathogens transmitted by food preparation workers. Indeed, it is estimated that as many as one-third of the cases of food-borne illness can be attributed to contamination of food from food preparation workers. FDA believes that the significant number of illnesses transmitted by worker contamination of food demand vigorous and rigorous intervention measures.

A number of the 1998 CFP issues opposed the current requirements in section 3–301.11 as too restrictive. In response, FDA proposed that the CFP defer consideration of many of the issues related to bare hand contact with ready-to-eat food and ask the NACMCF to review the issues and provide recommendations regarding unresolved scientific questions in time for FDA to report them to the 2000 CFP meeting. The delegates at the 1998 CFP meeting accepted the FDA recommendation.

II. Request for Data and Information

FDA is preparing for presentation of this issue to the NACMCF by developing a white paper, i.e., a summary of current information from scientific literature and other sources, that identifies and evaluates both the risks related to microbiological contamination of ready-to-eat food by food preparation workers and the effectiveness of different interventions to prevent or minimize that risk (e.g., hand washing, hand sanitizers, disposable gloves, no bare hand contact). In order to ensure that this white paper contains all available data relating to the risks and effectiveness of interventions to prevent or minimize contamination of ready-to-eat food, FDA is requesting scientific data, studies, or other information related to the following questions and issues:

1. FDA seeks scientific data or information on the risk of transmitting bacterial, viral, or parasitic pathogens from food preparation workers, via ready-to-eat food, to consumers, including scientific data and information relating to:

a. The amount of hand contact that can result in the transfer of pathogens;

b. Whether transient contact, such as might occur when placing a garnish on a plate or glass, can transfer pathogens;

c. Whether pathogens can be transferred to raw produce while washing it, if bare hands are used; and

d. Whether bare hands can transmit pathogens to dry food like toast or rolls.

2. FDA seeks scientific data or information on the effectiveness of alternative interventions, either alone or in combination, including scientific data and information relating to:

a. Hand washing with soap:

i. What constitutes a properly done hand wash;

- How long should the hand-washing process last;
- What is the optimum temperature of the water;
- Whether the use of a nailbrush increases removal of pathogens;
- Whether it is likely that a nailbrush would become a fomite, that is, become contaminated, and transmit bloodborne or enteric pathogens to subsequent users;
- How long before subdermal pathogens recontaminate the skin's surface; and
- Whether hand-drying methods have an impact on microbial reduction.

ii. Whether a double hand wash is significantly better than a properly done single wash.

b. Hand-washing machines; whether the use of a hand-washing machine can be the ''equivalent'' to a properly done hand wash, and if so, under what conditions.

c. Use of ''hand sanitizers:''

i. Whether human skin can be ''sanitized;''

ii. Whether chemical hand sanitizers are effective against all pathogens of concern;

iii. Whether subdermal pathogens can recontaminate the skin and, if so, how long it would take; and

iv. Whether the use of hand sanitizers can increase the number of pathogens on hands.

d. Use of disposable gloves:

i. Whether pathogens can increase in numbers on gloved hands;

ii. Whether gloves are likely to become fomites themselves even when properly used, e.g., as they are being put on; and

iii. Whether glove use procedures used in other venues are applicable in retail food establishments.

e. Whether there are other interventions that should be considered to prevent or minimize microbial contamination of ready-to-eat food by food preparation employees.

Finally, FDA is also interested in views on whether additional studies, either microbiological or epidemiological, are needed to fill existing knowledge gaps; and, if so, what kind of studies should be done.

Interested persons may, on or before June 1, 1999, submit to the Dockets Management Branch (address above) the required data and information. Two copies of the data and information should be submitted, except that individuals may submit one copy. Data and information are to be identified with the docket number found in brackets in the heading of this document. Received data and information may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 25, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8095 Filed 4–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Grants and Cooperative Agreements Availability

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice for CRADA Opportunities.

SUMMARY: New HIV treatments and diagnostic methods: Opportunities for Cooperative Research and Development Agreements (CRADAs) for the joint evaluation and development of inhibitors for multidrug resistant HIV and of methods to measure the biological and biochemical fitness of HIV protease mutants, and to assay new protease inhibitors using these methods.

Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. § 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks Cooperative Research and Development Agreements (CRADAs) with pharmaceutical or biotechnology companies to evaluate and develop new treatments and diagnostic methods for the multidrug resistant HIV-infected population. Any CRADA for the biomedical use of this technology will be considered. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborator will have an option to elect a non-exclusive or exclusive commercialization license to subject inventions arising under the CRADA and which are subject of the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Bjarne Gabrielsen, Technology Development & Commercialization Branch, National Cancer Institute—Frederick Cancer Research & Development Center, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquiries—Dr. John Erickson, Director, Structural Biochemistry Program, National Cancer Institute—Frederick Cancer Research & Development Center, P.O. Box B, Building 560, Room 12–68, Frederick MD, 21702–1201 (phone: 301–846–1979; FAX: 301–846–6066).

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential CRADA proposals, preferably two pages or less, must be submitted to the NCI on or before May

3, 1999. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents who have been selected.

SUPPLEMENTARY INFORMATION:

Technology Available

DHHS scientists in the Structural Biochemistry Program, NCI-Frederick Cancer Research and Development Center (SBP) have developed certain structural and biochemically-based technologies that are believed to be of value in the diagnosis and treatment of drug resistant HIV. Using these technologies, SBP scientists have developed strategies for designing inhibitors to multidrug resistant HIV, and for predicting resistance-potentials of HIV protease inhibitors. Recent evidence indicates that multidrug resistant HIV strains are appearing in the drug-naïve population at an increasing rate. Thus, the SBP research is believed to be at a stage that is ripe for the development of new treatments and diagnostic methods for the multidrug resistant HIV-infected population. SBP is interested in a multi-disciplinary but highly focussed approach to the biochemical and virologic evaluation of protease inhibitors against clinically-derived drug resistant mutant viruses, as well as in the structure-based design and chemical synthesis of new protease inhibitors for testing.

The successful Collaborator should possess experience in the following areas at a minimum: Experience with pre-clinical and clinical drug development for antiretroviral compounds; ability to generate site-directed mutant viruses for measurement of phenotypic resistance with specific expertise in HIV; application of automation and robotics technologies to cell culture-based antiviral assays and to enzyme-based biochemical assays with specific expertise in HIV; application of automation and robotics technologies to cell culture-based assays designed to measure phenotypic resistance; application of database and bioinformatics technologies for the manipulation, storage and analysis of high throughput assay data, including the development of software as required; and, the use of high throughput assay methods to evaluate protease inhibitors against multidrug resistant HIV mutants.

DHHS now seeks collaborative arrangements for the joint evaluation and development of methods to biochemical and virologic evaluate protease inhibitors against clinically-derived drug resistant mutant viruses, as well as in the structure-based design and chemical synthesis of new protease inhibitors for further analysis. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as full and timely exploitation of any commercial opportunities.

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with HIV drug resistant gene sequences and protease inhibitors for evaluation.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical expertise and/or financial support (e.g. facilities, personnel and expertise) for CRADA-related Government activities.
4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern patent rights to CRADA inventions.

Dated: March 25, 1999.

Kathleen Sybert,

Director, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–8097 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Working Group To Advise the ACD on Guidelines and Oversight Process for Research Involving Human Pluripotent Stem Cells

Notice is hereby given that the Working Group of the Advisory Committee to the Director (ACD), NIH to advise the ACD on guidelines and oversight for research involving human pluripotent stem cells, will meet in public session at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814, on April 8, 1999. The meeting will begin at approximately 9:00 a.m. and end at approximately 5:30 p.m.

The goal of the Working Group is to provide advice to the ACD about the scientific, ethical, legal, and social issues relevant to guidelines for the conduct of research utilizing human pluripotent stem cells (cells that can form most of the cells and tissues of the body) and to consider oversight options for this research.

A limited amount of meeting time will be allotted for public testimony. Individuals who wish to give five minute public testimony may sign up at the meeting site the morning of the meeting on a first come, first served basis. Written testimony may be submitted to: the Office of Science Policy, Bldg. 1, Room 218, NIH, 9000 Rockville Pike, Bethesda 20892.

Attendance may be limited to seat availability.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 99–8096 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.
Date: May 10–11, 1999.
Time: 8:30 AM to 1 PM.
Agenda: Recent experiments and experiences with the peer review process.
Place: National Institutes of Health, Two Rockledge Center, Conference Room 9104, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Samuel Joseloff, PHD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6160, MSC 7892, Bethesda, MD 20892, (301) 435–1040.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8102 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 5, 1999.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gloria B. Levin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date : April 7, 1999.
Time: 11:30 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheryl M. Corsaro, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6712, MSC 7890, Bethesda, MD 20892, (301) 435–1045.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 1999.
Time: 8:30 AM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Michael A. Lang, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 1999.
Time: 11 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Review, Special Emphasis Panel.
Date: April 8, 1999.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 1999.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Calbert Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel.
Date: April 8, 1999.
Time: 2 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel. ZRG–1 AARR–4 (03).
Date: April 8, 1999.
Time: 2 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mohindar Poonian, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 8, 1999.
Time: 2:35 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 9, 1999.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8103 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 1, 1999.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Laurence R. Stanford, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 16, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892-9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Reserach Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 29, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–8099 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5 (M–1).

Date: May 6–7, 1999.

Time: May 6, 1999, 8:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Francisco O. Calvo, PhD, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, BLDG. 45, Bethesda, MD 20892, 301–594–8897.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8100 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 (M2).

Date: April 23, 1999.

Time: 3 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shan S Wong, PhD. Scientific Review Administrator Review Branch, DEA, NIDDK, Natcher Building, Room 6 AS 25, National Institutes of Health Bethesda, MD 20892, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8101 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: April 6, 1999.

Time: 2 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Baltimore, on the Inner Harbor, 300 Light Street, Baltimore, MD 21202.

Contact Person: Bruce K. Wetzel, PhD., Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–8104 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program: Call for Public Comment on 11 Substances, Mixtures and Exposure Circumstances To Be Reviewed in 1999 for Listing in or Delisting (Removing) From the Report on Carcinogens, Tenth Edition

Background

The National Toxicology Program (NTP) announces its intent to review additional substances, mixtures and exposure circumstances for possible listing in or delisting (removing) from the Report on Carcinogens, Tenth Edition which is scheduled for publication in 2001. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally-directed listing of known human carcinogens and reasonable anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a report which contains a list of all substances (1) which either are known to be a human carcinogen or reasonable anticipated to be a human carcinogen, and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The scientific review of the substances, mixtures or exposure circumstances involves three separate reviews, which include two Federal review groups and one non-government peer review body (a subcommittee of the NTP Board of Scientific Counselors) which will meet in an open, public meeting and provide for public comments. All available data and public comments received that are relevant to the application of the criteria for inclusion or removal of candidate agents, substances, mixtures or exposure circumstances or for a change in the classification in the Report will be evaluated. The criteria to be used in the review process are described below:

1. Known to be Human Carcinogens:

There is sufficient evidence of carcinogenicity from studies in humans which indicates a causal relationship between exposure to the agent, substance or mixture and human cancer.

2. Reasonably Anticipated to be Human Carcinogens:

There is limited evidence of carcinogenicity from studies in humans which indicates that causal interpretation is credible but that alternative explanations such as chance, bias or confounding factors could not adequately be excluded; *or*

There is sufficient evidence of carcinogenicity from studies in experimental animals which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors: (1) In multiple species, or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site or type of tumor or age at onset; *or*

There is less than sufficient evidence of carcinogenicity in humans or laboratory animals, however; the agent, substance or mixture belongs to a well defined, structurally-related class of substances whose members are listed in a previous Report on Carcinogens as either a known to be human carcinogen, or reasonably anticipated to be human carcinogen or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

Clarification of the Criteria

Some questions have arisen regarding information from studies involving humans and how this is applied to the listing of a substance determined to be a ''known human carcinogen''. The ''known human carcinogen'' category *requires* evidence from studies of humans. This can include traditional cancer epidemiology studies, data from clinical studies, and/or data derived from the study of tissues from humans exposed to the substance in question and useful for evaluating whether a relevant cancer mechanism is operating in people.

Public Comment Requested

Nominations for the Report on Carcinogens to be reviewed in 1999 are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action. NTP invites public comment on any of these nominations. In addition, NTP requests relevant information on the carcinogenic properties of the substances from completed or ongoing experimental animal or human epidemiology studies, as well as current production data, use patterns, and human exposure information. Comments received by April 30, 1999 will allow the time for their consideration by the initial review groups and by the NTP in the preparation of the background document prepared for each substance. Comments or questions should be directed to Dr. C. W. Jameson at the address listed below.

Public Nominations for Delisting or Listing Encouraged

The NTP solicits and encourages the broadest participation form interested individuals or parties in nominating agents, substances, mixtures or exposure circumstances for listing in or delisting from the Reports on Carcinogens. Nominations from the public should contain a rationale for listing or delisting. Appropriate background information and relevant data (e.g. Journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.) which support a nomination should be provided or referenced when possible.

A detailed description of the review procedures, including the steps in the formal review process, is available at http://*ntp-server.niehs.nih.gov* and can be obtained by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0947, email: jameson@niehs.nih.gov.

Dated: March 22, 1999.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TO BE REVIEWED IN 1999, FOR CONSIDERATION OF LISTING IN OR DELISTING FROM THE TENTH REPORT ON CARCINOGENS

Nomination to be reviewed/CAS No.	Primary uses or exposures	To be reviewed for
Beryllium and Beryllium Compounds/7440–41–7	Fiber optics and cellular network communications systems, aerospace, defense and other industry applications.	Possible updating of current listing of beryllium and certain beryllium compounds to a known human carcinogen.
2,2–bis-(bromomethyl) – 1,3–propanediol/3296–90–9	Used as a fire retardant in unsaturated polyester resins, in molded products, and in rigid polyurethane foam.	Listing in the 10th Report.
2,3–Dibromo–1–Propanol/96–13–9	Used as a flame retardant, as an intermediate in the preparation of the flame retardant tris(2,3–dibromopropyl) phosphate, and as an intermediate in the manufacture of pesticides and pharmaceutical preparations.	Listing in the 10th Report.
Dyes Metabolized to Dimethoxybenzidine (Dimethoxybenzidine Dyes as a Class).	Dyes widely used for leather, paper, plastics, rubber, and textile industries.	Listing in the 10th Report.
Dyes Metabolized to Dimethoxybenzidine (Dimethoxybenzidine Dyes as a Class).	Dyes widely used for leather, paper, plastics, rubber, and textile industries.	Listing in the 10th Report.
IQ (2–Amino–3–methylimidazo[4,5–f]quinoline)/76180–96–6.	Found in cooked meat and fish	Listing in the 10th Report.
Styrene=7,8=oxide/96–09–3	Used mainly in the preparation of fragrances and in some epoxy resin formulations.	Listing in the 10th Report.
Toluene Diisocyanate/26471–62–5	Commercially produced as an approximately 80:20 mixture of the 2,4– and 2,6–isomers it is primarily for use in the manufacture of flexible polyurethane foams.	Delisting from the Report on Carcinogens.
UV Radiation/separate consideration of three segments of the wavelength spectrum; UVA (315–400 nm), UVB (280–315 nm), and UVC (100–280 nm).	Soloar and artifical sources of ultraviolet radiation ...	Listing in the 10th Report.
Vinyl Bromide/593–60–2	Used commercial since 1968, primarily in the manufacture of flame retardant synthetic fibers.	Listing in the 10th Report.
Vinyl Fluoride/75–02–5	Used commercially since the 1960's, in the production of polyvinylfuoride which is used for plastics.	Listing in the 10th Report.

[FR Doc. 99–8098 Filed 4–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Drug and Alcohol Services Information System (DASIS) (OMB No. 0930–0106)—Revision—The DASIS consists of three related data systems: the National Master Facility Inventory (NMFI), the Uniform Facility Data Set (UFDS), and the Treatment Episode Data

Set (TEDS). The NMFI includes all known substance abuse treatment facilities, and those substance abuse prevention facilities identified by State agencies. The UFDS is an annual survey of all facilities listed in the NMFI. The TEDS is a compilation of client-level admission data submitted by States on clients treated in facilities that receive State funds. Together, they provide information on the location, scope and characteristics of all known drug and alcohol treatment and prevention facilities in the United States, and the characteristics of clients receiving services. This information is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals.

This request for OMB approval of DASIS activities includes the following changes in the ongoing DASIS activities:

TEDS: Voluntary reporting of discharge data will be added to the current reporting of admission data for those States that are able to provide linked admission and discharge records. The discharge data set will include the following client-level data: Provider ID; Client ID; Co-dependent/Collateral flag; Services at discharge; Date of last contact; Date of discharge; and Reason for discharge, transfer, or discontinuance of treatment.

NMFI: The forms used by States to update information on facilities in the NMFI have been automated and will be available on the Internet through the DASIS home page. The on-line version of the update forms will include the following new items: Detoxification services (to be added to the checklist of services, FDA (Methadone) ID, EIN, Director's phone number, and TEDS eligibility dates.

UFDS: Beginning in 1999, the UFDS survey will be conducted by telephone using CATI technology. The questionnaire will be significantly shortened; client counts for most demographic subgroups, services provided (except for programs for special populations), revenue data, and selected other items will not be asked. Sample augmentation activities, which involve searching directories and other sources for substance abuse treatment facilities not included in the NMFI, will not be conducted prior to the 1999 UFDS but will be conducted in preparation for the 2000 and 2001 UFDS.

Proposed changes will be distributed each year to State substance abuse agencies to obtain their comments and suggestions.

Estimated annual burden is as follows:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
STATES				
TEDS Admission Data [1]	52	4	6	1,248
TEDS Discharge Data [1]	13	4	6	312
TEDS Discharge Crosswalks	5	1	10	50
NFR Update [2]				
Additions	56	17	.08	76
Revisions	56	24	.0	67
Solicitation of Comments on UFDS revisions	56	1	.5	28
State Subtotal	56			1,781
FACILITIES				
Network Update	1,000	1	.1	100
UFDS Survey	21,000	1	.3	6,300
Augmentation Screening	2,000	1	.12	240
Pretests of UFDS revisions [3]	100	1	.75	75
Facility Subtotal	23,000			6,715
TOTAL	23,056			8,496

[1] This includes time for reformatting data received from facilities and submitting it to SAMHSA.
[2] States forward to SAMHSA information they receive from facilities on changes in facility name, address, status, etc. This will now be done electronically.
[3] Two pretests of 50 facilities each are proposed.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 29, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–8137 Filed 4–1–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–13]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterals Adminstration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been

determined suitable or unsuitable this week.

Dated: March 25, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–7825 Filed 4–1–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Arid Lands National Wildlife Refuge Complex, Arid Lands Ecology Reserve

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Arid Lands Ecology Reserve in the Arid Lands National Wildlife Refuge Complex.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and an Environmental Assessment (EA) for the Arid Lands Ecology (ALE) Reserve. The Service manages the ALE Reserve pursuant to a Memorandum of Understanding, and an associated permit, with the Department of Energy (DOE). The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations to accomplish the following: (1) advise other agencies and the public of our intentions; (2) obtain suggestions and information on the scope of issues to include in the plan and environmental document; and (3) provide notice that the Service is proposing an administrative boundary to incorporate lands it manages for DOE into the National Wildlife Refuge System.

DATES: Written comments should be received on or before May 3, 1999.

ADDRESSES: Address comments and requests for more information to: Dave Goeke, Refuge Manager, Arid Lands National Wildlife Refuge Complex, 3250 Port of Benton Blvd., Richland, WA 99352.

FOR MORE INFORMATION CONTACT: Dave Goeke, Refuge Manager, at (509) 371–1801.

SUPPLEMENTARY INFORMATION: The ALE Reserve, formally known as the Fitzner-Eberhardt Arid Lands Ecology Reserve, is being managed by the Service under agreement with DOE. The Service entered into a 25-year Memorandum of Understanding (MOU) on June 20, 1997, for the protection and management of the Hanford Site area known as the ALE Reserve. Pursuant to the MOU, the FWS is to prepare a comprehensive plan to govern management activities on the ALE Reserve. DOE is a cooperating agency on the CCP/EA. The CCP/EA will be prepared by the Service, which will consult with DOE during the process.

Concurrent with the planning process, the FWS will evaluate public comments on the EA and determine whether to establish a refuge boundary. The refuge boundary would permit the Service to administer inclusive areas as part of the NWRS once acquired or when overlaying management authority has been granted by permit from DOE. The refuge boundary would include the ALE Reserve, but final delineation of a boundary will depend on additional information and public involvement.

The Service started the comprehensive conservation planning process for the ALE Reserve study area in June, 1998. Several internal Service meetings were conducted to develop a timeline and strategy for involving the public in the planning process. Since then, the Service has met with the Benton County Commission and with the Washington Department of Fish and Wildlife to discuss issues and concerns regarding management of the ALE Reserve. Also, the Service conducted a public meeting and open house in Richland, Washington, on January 14, 1999. Approximately 60 people attended the open house and approximately 120 participated in the public meeting. Information from those meetings can be provided by Refuge staff at the address given above. A newsletter has been distributed and approximately 80 people have provided written comments in response.

The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving wildlife and habitat management purposes. Public input into the process is encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the ALE Reserve and how the Service will implement management strategies.

The CCP will support the requirements of the MOU and will address the following topics:

(A) Habitat management;

(B) Wildlife population management, including federally-listed endangered and threatened species, migratory birds, and other native wildlife species;

(C) Public use management, including hunting, wildlife observation and photography, and environmental education and interpretation

(D) Cultural resource identification and protection

The ALE Reserve is a 120 square-mile tract of land in the southwestern portion of the Hanford Site. The Hanford Site was acquired by the U.S. Government in 1943 as a national security area for the production of weapons-grade plutonium. The ALE Reserve was managed for many years for DOE by the Pacific Northwest National Laboratory. The ALE Reserve generally is inaccessible to the public, though limited access is occasionally granted. Although part of the Hanford Site, the ALE Reserve was established to preserve a vegetation type that once covered great expanses in the West. The site is also designated as the Rattlesnake Hills Research Natural Area.

Alternatives (and their effects) that address issues and management strategies associated with the CCP topics will be included in the environmental document. With the publication of this notice, the public is encouraged to send written comments on these and other issues, courses of action that the Service should consider, and potential impacts that could result from implementation of the CCP on the ALE Reserve. All comments received from individuals on environmental documents become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and other Service and Departmental policy and procedures. When requested, the Service generally will provide the names and addresses of individuals who wrote comments. However, telephone numbers will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to identify the author or the author's address. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: March 26, 1999.

Cynthia U. Barry,

Acting Regional Director, Region 1.

[FR Doc. 99–8135 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Advisory Committee on Water Information (ACWI)

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting of the ACWI is to discuss broad policy-related topics relating to national water initiatives, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum 92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-information users and professionals to advise the Federal Government of activities and plans which may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8:00 a.m., on May 18, 1999, and will adjourn on May 19, 1999 at 3:30 p.m.

ADDRESSES: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Ethan T. Smith (Executive Secretary), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–5022; Fax: 703–648–5295.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. A half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Dr. Smith at the above address no later than noon, April 27, 1999. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Dr. Smith for distribution at the ACWI.

Dated: March 26, 1999.

Lewis V. Wade,

Assistant Chief Hydrologist for Information, U.S. Geological Survey.

[FR Doc. 99–8110 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1220–00; Closure Notice No. NV–030–99–001]

Emergency Closure of Federal Lands

SUMMARY: Notice is hereby given that certain public lands in the vicinity of the Peterson Mountain Natural Area, Washoe County, Nevada, are closed to all motorized vehicles. This closure is necessary due to unauthorized road construction and off-road vehicle use which is causing considerable adverse effects to soil, vegetation and wildlife habitat in the area. It is possible that cultural resources also are being impacted.

DATES: This closure goes into effect on April 1, 1999, and will remain in effect until the Manger, Carson City Field Office, determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: Margaret Jensen, Assistant Manager, Division of Nonrenewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6100.

SUPPLEMENTARY INFORMATION: The authorities for this closure are 43 CFR 8341.2, 43 CFR 8342.3 and 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines in accordance with applicable provisions of 18 USC 3571 and/or imprisonment not to exceed 12 months.

This closure applies to all motorized vehicles excluding (1) any emergency or law enforcement vehicles while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Manager, Carson City Field Office. The public lands affected by this closure are located just east of Petersen Mountain and, while excluding main access roads in this area, include all lands being used as an unauthorized motorcycle race course within:

Mt. Diablo Meridian

T.22N., R.18E.
Sec. 11

A map of the area closed to motorized vehicles is posted in the Carson City Field Office.

Dated: March 23, 1999.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 99–8109 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–09–1430–01; G–0156]

Temporary Closure of Public Land

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of Temporary Closure of Public Land.

The following described public land is being temporarily closed to motorized vehicular traffic pursuant to 43 CFR 8364.1:

Willamette Meridian

T.23S., R.26E.,
Sec. 28, SW¼SW¼;
Sec. 29, SE¼.

Those portions of the above-described land west of the Chickahominy Reservoir Access Road; south and west of the waterline of Chickahominy Reservoir; and, north of U.S. Highway 20.

The following exceptions apply:

1. Law enforcement, emergency personnel, and Bureau of Land Management and Oregon Department of Fish and Wildlife employees while engaged in official duties without a written waiver.

2. Motorized water craft without a written waiver.

3. Other individuals in the possession of a written waiver who, as determined by the Authorized Officer, have a demonstrated need to travel by motorized vehicle in the area being closed.

The closure is necessary to prevent damage to roads and adjacent resources during extremely wet springtime conditions. Unrestricted traffic during this time of year is creating excessive impacts to soil and vegetative resources resulting in erosion and sedimentation of the reservoir. Additionally, funds are

not readily available to routinely repair and maintain roads in the area damaged by vehicular traffic.

The closure will take effect upon posting of this notice on the land and remain effective until, as determined by the Authorized Officer, the land is suitable for continued motorized vehicular traffic.

Failure to comply with this temporary closure may result in a fine of not more than $1,000 or imprisonment not to exceed 12 months, or both, in accordance with 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, including an analysis of the closure, and for waivers should be directed to Craig M. Hansen or Skip Renchler, Bureau of Land Management, HC 74–12533, Hwy 20 West, Hines, Oregon 97738, phone (541) 573–4400.

Dated: March 25, 1999.

Rudolph J. Hefter,

Supervisory Natural Resource Specialist.

[FR Doc. 99–8168 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1220–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Miles City District Resource Advisory Council will have a meeting April 28 and 29, 1999 in Miles City, Montana at the Range Riders Museum meeting room west of Miles City. Agenda topics include access, back-country by-ways, and the Terry Badlands Wilderness Study Area, with updates on Pompeys Pillar and the noxious weeds program. On Wednesday the meeting starts at 1:00 p.m. and is expected to adjourn about 5:00 p.m. The Council will reconvene at 8:00 a.m. on Thursday and adjourn at noon.

The meeting is open to the public and the public comment period is set for 8:00 a.m. on April 29. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: March 17, 1999.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 99–8169 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–99–1410–00; AA–75642]

Realty Action; FLPMA Lease of Public Lands, Near Akiachak, Alaska

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action, lands are within the boundary of the Alaska Southwest Area Management Framework Plan (MFP), dated November 1981.

SUMMARY: This Notice of realty action involves converting a permit to a lease on public lands administered by the BLM. The lease is intended to authorize continued use of one acre of land for a commercial trapping cabin approximately 60 miles west of Bethel, Alaska. This land has been examined and found suitable for leasing under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA), of 1976, and 43 CFR Part 2920.

Seward Meridian, Alaska

T. 8 N., R. 61 W., Sec. 2

The above land aggregates one acre.

DATES: Interested parties may submit comments until May 17, 1999.

ADDRESSES: Comments must be submitted to the Anchorage Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Bonds, BLM, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599, 907–267–1239, or 1–800–478–1263.

SUPPLEMENTARY INFORMATION: The BLM proposes to lease the surface of approximately one acre of public land to Brian W. Latham of Akiachak, Alaska, under a renewable twenty (20) year lease. The appraised rental on the land is fair market rental value. In addition, the lessee shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the lease. The general terms and conditions for leases are found in 43 CFR 2920.7.

Nicholas E. Douglas,

Anchorage Field Manager.

[FR Doc. 99–8108 Filed 4–1–99; 8:45 am]

BILLING CODE 1410–00–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1430–01, COC–49757, COC–62293, COC–62759]

Notice of Realty Action; Recreation and Public Purposes (R&PP)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Boulder, Gilpin and Chaffee Counties have been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 *et seq.*)

COC–49757—The Colorado State Division of Parks and Outdoor Recreation proposes to amend their existing Recreation and Public Purpose lease to include the following 52 acres in the Big Bend area. The lands will be managed as part of the Arkansas Headwaters Recreation Area (AHRA). The area to be leased lies adjacent to lands owned and managed by Colorado State as part of the AHRA.

New Mexico Principal Meridian

T. 50 N., R. 8 E.,
Sec. 21: That portion of the E½E½NE¼SE¼ lying east of Highway 285,
Sec. 22: NW¼SW¼
Consisting of approximately 52 acres in Chaffee County

COC–62293—The Colorado Division of Parks and Outdoor Recreation proposes to lease and/or patent the following lands to be included in the exiting Eldorado Canyon State Park:

Sixth Principal Meridian

T. 1 S., R. 71 W.,

Sec. 26: Tracts 142 and 147
Sec. 35: Tract 130A

Consisting of 122.97 acres in Boulder County

COC–62759—Gilpin County proposes to lease and/or patent the following lands for the purpose of a fire station, ambulance crew quarters with garage and potentially for administration offices for a local clinic:

Sixth Principal Meridian

T. 3 S., R. 73 W.,
Sec. 2: Lot 40 (within)

Consisting of approximately 20 acres

The lands are not needed for Federal purposes. Lease or conveyance for recreational use or for public purposes is consistent with current BLM land use planning and would be in the public interest.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act.

DATES: Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands before June 4, 1999. Reference the applicable serial number in all correspondence. In the absence of any adverse comments, the classification will become effective June 4, 1999.

ADDRESSES: District Manager, Canon City District Office, or Area Manager, Royal George Resource Area, 3170 East Main, Canon City, Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Chaffee County: Dave Hallock, Realty Specialist, at (719) 269–8536. Boulder County: Jan Fackrell, Realty Specialist at (719) 269–8525. Gilpin County: Lindell Greer, Realty Specialist at (719) 269–8532.

SUPPLEMENTARY INFORMATION: Classification comments—interested parties may submit comments involving the suitability of the land for the purposes stated. Comments are on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application comments—interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposals.

This action is in response to applications by the Colorado State Division of Parks and Outdoor Recreations and Gilpin County. Lease of the lands will not be authorized until after the classification becomes effective. Lease or patent of the lands for recreational or public purpose use would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public and records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Donnie R. Sparks,

District Manager.

[FR Doc. 99–8170 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; National Capital Memorial Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 1:30 p.m., on Tuesday, April 13, 1999, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, D.C.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the agenda is expected to include the following:

I. Consultation: Memorial proponents will consult with the Commission on aspects of these authorized memorials:

Site selection alternatives and design concepts for the Mahatma Gandhi Memorial across Massachusetts Avenue from the Embassy of India (bordered by 21st Street, Q Street, and Massachusetts Avenue, NW.).

The Commission will consider these matters and take action as appropriate in order to advise the Secretary of the Interior (the Secretary).

II. Review of Legislation: The Commission will review the following legislative proposal:

A. S. 311 (1/26/99), a bill to authorize the Disabled Veterans LIFE Foundation to establish a memorial in the District of Columbia or its environs to honor veterans who became disabled while serving in the Armed Forces of the United States.

The Commission was established by Public Law 99–652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, D.C., and its environs.

The members of the Commission are as follows:

Director, National Park Service

Chairman, National Capital Planning Commission

Architect of the Capitol

Chairman, American Battle Monuments Commission

Chairman, Commission of Fine Arts

Mayor of the District of Columbia

Administrator, General Services Administration

Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Executive Secretary to the Commission, at (202) 619–7097.

Dated: March 29, 1999

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 99–8131 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 27, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by April 19, 1999.

Beth Boland,

Acting Keeper of the National Register.

ALABAMA

Bibb County

Blocton Italian Catholic Cemetery, Primitive Ridge Rd., West Blocton, 99000464

Dallas County

Pleasant Hill Presbyterian Church, 0.2 mi. E of jct. of Cty. Rd. 7 and Cty. Rd. 12, Pleasant Hill, 99000465

Jefferson County

Birmingham—Southern College, Arkadelphia Rd. bet. 8th Ave. W and I–20/59, Birmingham, 99000466

Howard College Estates Historic District, Roughly along 77th Way, 77th Place, Vanderbilt St., 8th Court, 8th, Rugby, and Belmont Aves., Birmingham, 99000467

Marshall County

Snead Junior College Historic District, 220 N. Walnut St., 308 W. Mann Ave., 201 College Ave., and 300 and 301 Elder St., Boaz, 99000468

Morgan County

Hartselle Downtown Commercial Historic District, Roughly along Main, Railroad, Hickory, and Sparkman Sts., Hartselle, 99000469

ARKANSAS

Desha County

Temple Meir Chayim (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS) Jct. of 4th and Holly Sts., McGehee, 99000470

CALIFORNIA

Yolo County

Downtown Woodland Historic District, Roughly along Main St. from Elm St. to Third St., Woodland, 99000471

FLORIDA

Hendry County

Scharnberg House, 325 E. Del Monte Ave., Clewiston, 99000472

GEORGIA

Ben Hill County

Kimball, Charles W., House, 137 Hudson St., Fitzgerald vicinity, 99000473

MICHIGAN

Oakland County

Sprague, Rollin, Building—Old Stone Store, 300 Main St., Rochester, 99000474

MISSISSIPPI

Bolivar County

Downtown Cleveland Historic District, Roughly along Central Ave., from approx. Coleman St. to Collins St., Cleveland, 99000477

Jackson County

Back Bay of Biloxi Shipwreck Site, Address Restricted, Ocean Springs vicinity, 99000476

MISSOURI

Cole County

Tergin Apartment Building, 201 W. McCarty St., Jefferson City, 99000475

NEBRASKA

Knox County

Argo Hotel, 211 Kansas St., Crofton, 99000478

NORTH CAROLINA

Nash County

Rocky Mount Mills Village Historic District, Bounded by Tar R., Columbia Ave., Spring St., and Carr St., Rocky Mount, 99000479

Orange County

Cabe—Pratt—Harris House, NC 1567, 0.9 mi. N. of Eno River Bridge, Hillsborough vicinity, 99000481

Stanly County

Pfeiffer University Historic District, US 52, 1.0 mi. N. of jct. with NC 49, Misenheimer, 99000480

[FR Doc. 99–8151 Filed 4–1–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Third Consent Decree Modifying First and Second Consent Decrees in *United States* v. *Hamm's Holiday Harbor, Inc. and Richard E. Hamm*, No. 89–1287 (C.D. Ill.), was lodged with the United States District Court for the Central District of Illinois on March 15, 1999. This Consent Decree modifies two existing consent decrees entered into by the Plaintiff United States and Defendants Hamm's Holiday Harbor, Inc. and Richard E. Hamm pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319, and section 12 of the Rivers and Harbors Act, 33 U.S.C. 406, providing for injunctive relief and imposing civil penalties upon the Defendants for discharge of dredged or fill material in violation of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and sections 10 and 13 of the Rivers and Harbors Act, 33 U.S.C. 403, 407, at two sites along the Illinois River in Peoria County and Marshall County, Illinois.

The Consent Decree prohibits additional illegal discharges by the Defendants, and requires Defendants to, among other things: (1) Forfeit in fee a 90-acre parcel in Marshall County, Illinois to the Illinois Department of Natural Resources (''IDNR''); (2) pay money to be used for environmental restoration on a portion of the Marshall County site; (3) pay stipulated penalties to the United States for Defendants' violations of the two previous consent decrees; and (4) complete all outstanding environmental remedial tasks at the Peoria County site that were required under the first of the previous consent decrees.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Seth M. Barsky, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Hamm's Holiday Harbor, Inc. and Richard E. Hamm*, DJ #90–5–1–1–4444.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Central District of Illinois, 305 Federal Building, 100 N.E. Monroe Street, Peoria, Illinois 61602.

Anna L. Wolgast,

Deputy Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 99–8141 Filed 4–1–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; HRIFA supplement to Form I–485 instructions.

The Department of Justice, Immigration and Naturalization Service

(INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by April 12, 1999. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shaprio at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this the information collection. Comments are encouraged and will be accepted until June 1, 1999. During 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A.Sloan, 202–514–3291, Director, Policy directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of Form/Collection:* HRIFA Supplement to Form I–485 Instructions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–485C. Office of Programs, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this application will be used to determine whether an alien applying for adjustment of status under the provisions of section 902 of Division A, Title IX of Public law 105–277 is eligible to become a permanent resident of the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 29, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–8124 Filed 4–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Section 402: Migrant and Seasonal Farmworker Program and Workforce Investment Act of 1998; Section 167: Migrant and Seasonal Farmworker Programs

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA) for Migrant and Seasonal Farmworker Programs under the Job Training Partnership Act for Transitioning to the Workforce Investment Act.

SUMMARY: The U.S. Department of Labor (the Department or DOL) announces the availability of funds under Solicitation for Grant Applications (SGA–DFA–99–009), for Migrant and Seasonal Farmworker (MSFW) Programs for Program Year (PY) 1999, and procedures for selection of designated grantees for PY 1999 and PY 2000 (July 1, 1999 through June 30, 2001). This SGA is under the authority of Section 402 of the Job Training Partnership Act (JTPA), 29 U.S.C. 1672, and Section 167 of the Workforce Investment Act (WIA), 29 U.S.C. 9201. Applicants selected will be designated as PY 1999/2000 grantees to deliver appropriate workforce investment activities, and related assistance, to eligible migrant and seasonal farmworkers. Section 402 of JTPA and Section 167 of WIA require that the eligible entities be selected using a process consistent with Federal competitive procurement policies.

DATES: The closing date for receipt of applications is May 7, 1999, by 4:00 p.m. (Eastern Time). No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications must be mailed or hand-delivered to: Ms. Lorraine Saunders, U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Room S–4203, 200 Constitution Avenue, NW, Washington, D.C. 20210. Reference: SGA/DFA 99–009.

FOR FURTHER INFORMATION CONTACT: Ms. Lorraine Saunders at 202–219-8702 × 145 (this is not a toll-free number).

Part A—Introduction and Background

Introduction: During PY 1999, the MSFW program will transition its

operating authority from the JTPA to the WIA so that full implementation of WIA occurs on or before the July 1, 2000 (the beginning of PY 2000). Grantees have the authority under WIA during PY 1999 to take the steps necessary to transition from JTPA operating authority to WIA operating authority. This authority facilitates moving jointly with the States and in conjunction with the Local Workforce Investment Boards, as appropriate. Grantees may submit proposals to operate under WIA or under JTPA in PY 1999 or may transition from JTPA to WIA during that year.

In addition, the Department intends to exercise its option to waive competition for the succeeding two-year period (PY 2001 and PY 2002) for grantees who perform satisfactorily during PY 1999 and PY 2000. In accordance with WIA Section 167(c)(4)(B), the Department will establish criteria for making a determination of satisfactory performance upon which to base the anticipated waivers of competition for the second two-year period. The Department will advise the grantees of its determination and will include the criteria to be used for determining satisfactory performance.

The proposals submitted must consist of six (6) sections as follows: Section I—covering the applicant's understanding of the problems of eligible migrant and seasonal farmworkers (including dependents). Section II—capacity for utilizing the existing service environment (and familiarity with the area to be served). Section III—proposed major activities (including approach in transitioning from JTPA to WIA implementation within the proposed service area). Section IV—programmatic experience. Section V—general administrative/financial management capability. Section VI is a place holder for the applicant's attachments. The statement of programmatic experience must reflect the applicant's capacity to administer effectively a diversified program of workforce investment activities and related assistance (an employability development program under JTPA) for eligible migrant and seasonal farmworkers.

For rating purposes, Sections I–V are assigned a range of possible points, and the sum of the maximum possible points for all five sections totals 100. The most heavily weighted criteria is for Section III which covers the proposed program design, plans for serving the target MSFW population and proposed strategy for successfully transitioning to full WIA implementation. The applicant's proposal for Section III should be a description of an operational plan that is appropriate to the service environment described by the proposer in Sections I and II.

Background:

The objective of the Migrant and Seasonal Farmworker Program under section 402 of the Job Training Partnership Act is to provide services to meet the employment and training needs of migrant and seasonal farmworkers through such public and private nonprofit organizations as determined by the Secretary to have an understanding of the problems of migrant and seasonal farmworkers, a familiarity with the area to be served, and a previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers.

Section 167 of WIA specifies that the MSFW program provide workforce investment activities and related assistance for eligible migrant and seasonal farmworkers through eligible entities that demonstrate an understanding of the problems of eligible migrant and seasonal farmworkers, a familiarity with the area to be served, and a capacity to administer effectively a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers (MSFWs).

The MSFW program is subject to all applicable provisions of the JTPA regulations at 20 CFR 633, the WIA Interim Final Regulations, and to the Department's regulations at 29 CFR Parts 93 (New Restrictions on Lobbying), 96 (Audit Requirements), and 98 (Debarment, Suspension and Drug-free Workplace requirements), and the Department's nondiscrimination regulations at 29 CFR 34 and the nondiscrimination regulations implementing WIA Section 188. Should the regulations at Part 669 conflict with regulations elsewhere in 20 CFR, the regulations at Part 669 will control. The WIA interim final regulations will be published soon. Further, should any instructions in this notice conflict with WIA Interim Final Rules, the WIA regulations control. Applicants should consult and be familiar with WIA regulations at 20 CFR Parts 660 through 671.

Consultation With Governors and Local Boards

Executive Order No. 12372, ''Intergovernmental Review of Federal Programs,'' and the implementing regulations at 29 CFR Part 17, are applicable to this program. Under these requirements, the applicant must provide a copy of the application for comment to the States that have established a consultation process under the Executive Order. Applications must be submitted to the State's Single Point of Contact (SPOC) no later than the deadline for submission of the application to the Department.

For States that have not established a consultative process under Executive Order No. 12372, and have established a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultation process fulfills the requirement of WIA Section 167(e) concerning consultation with Governors and local Boards. To strengthen the implementation of Executive Order No.12372, the Department establishes the following time-frame for its treatment of comments from the State's SPOC on WIA Section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for submission of application;
2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;
3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and
4. The Department will implement that decision within 10 days after it has notified the SPOC.

State Area Allocation Estimates

State area planning estimates will be published in a separate issue of the **Federal Register.**

Part B—Solicitation for Grant Application

To provide training, employment opportunities, and related services to eligible migrant and seasonal farmworkers under JTPA section 402 and WIA section 167, the Department selects the grantee for each service area from among the competing eligible entities that apply for the grant to serve the area. Both WIA and JTPA provide that organizations eligible to operate MSFW programs must:

- Have an understanding of the problems of eligible migrant and seasonal farmworkers (including dependents),
- Have a familiarity with the area to be served, and
- Have a demonstrated capacity to administer effectively a diversified program of workforce investment

activities are related assistance for eligible migrant and seasonal farmworkers.

Submittal of the Grant Application Package

Applicants must submit an original and three (3) copies of the complete application package for review. Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if application are hand-delivered, they must be received at the designated place by 4:00 p.m. Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(b) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelop or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by ''Express Mail Next-Day Service-Post Office to Addressee'' is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram__) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

The Grant Application Package

The Application package must consist of:

(1) A Standard Form 424 found in OMB Circular A–102 and as an attachment to this Solicitation;

(2) A certification prepared within the last six months, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The Certification is to be obtained as follows:

(a) for incorporated organizations, a certification from a Certified Public Accountant, or

(b) for a public agency, a certification by its Chief Fiscal Officer;

(3) A statement indicating the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(4) The entity's employer identification number (EIN) issued by the Internal Revenue Service;

(5) If the applicant is a current JTPA 402 grantee, a summary of program performance for PY 97 and for PY 98 (through the 3rd Quarter); and

(6) The entity's application for grant funding (an original and 3 copies with original signatures) as described below.

Format and Content of Grant Application

The grant application is limited to 75 numbered pages, double-spaced, in 12-point type. This page limitation does not include any letters of support or the required attachments. Do not include detailed budgets and program planning estimates in this grant application package. Planning and budget documents will be provided to selected applicants, as appropriate. To ensure full consideration, the application must follow the numerical sequence of the Sections I through V as listed below, include all attachments under Section VI, and include a Table of Contents.

To facilitate the applicant's understanding of the application process the rating criteria for each Section is included. Section VI serves as the holding place in the application for the applicant's attachments.

CONTENTS OF APPLICATION

Section I—Understanding MSFW Population of the Service Area

In this section, applicants should describe the problems that are faced by MSFWs over the course of a year in the specific local geographic areas proposed to be served. An understanding of the local economy and the problems faced by MSFWs working within that economy is important to formulating an effective service strategy.

Applicants must provide the following information in this section:

(1) A description of the socio-economic characteristics, problems and needs of eligible migrant and seasonal farmworkers (and their dependents) in the proposed service delivery area. (**Note:** For applicants that are current JTPA Section 402 grant recipients, a recapitulation solely of the socio-economic characteristics of past or current participants will not adequately address this requirement); and

(2) A description of the types of workforce investment activities necessary to respond to the needs of the eligible population described in paragraph (1) above, explaining how the proposed activities will address those needs.

Rating Criteria for Section I—0 to 15 Points

The scoring will be based on the applicant's (1) described understanding of the socio-economic characteristics and needs of the MSFW population and (2) whether the applicant's analysis of how the needs described will be addressed through its proposed program mix of workforce training activities and supportive services.

Section II—Capacity for Utilizing the Existing Service Environment

In this section applicants should describe their current or planned programmatic ties within the proposed service area to appropriate entities, including those entities that provide educational, health and child care

services to eligible farmworkers. Those entities may include: State and Local Workforce Investment Boards, the local One-Stop Centers, State and Local Offices of Migrant Education and Migrant Health, Farmworker Housing Programs, eligible providers of training services as described in WIA section 122, and other local service organizations. (**Note:** Letters of commitment documenting appropriate programmatic ties should be attached to the application in Section VI.)

Applicants that are not a current MSFW program grantee may demonstrate their potential to enter a new market by describing community ties related to service to farmworkers from its experiences in other areas and/or programs and anticipated ties in the specific community applied for.

Applicants must provide the following information in this section:

(1) A labor market assessment of the proposed service area with projections for employment needs, projected skill shortages based on new or changing industry growth, as well as those created by emerging technologies, and specific job opportunities that are available in the service area;

(2) A general description of the current service environment in the proposed service delivery area. Include existing and proposed working relationships and agreements with agencies, organizations and institutions within the service area;

(3) A description of the area-wide strategy proposed or underway for implementing the requirement of WIA to make core services of the local One-Stop Center available to the MSFWs served under the grant. This transition should occur in tandem with the State's implementation schedule; and

(4) A description of the applicant's proposed delivery system, including a list of the field/regional office locations and any other delivery agents, and a description of the range of services proposed for each office location.

Rating Criteria for Section II—0 to 15 Points

The scoring will be based on the applicant's (1) understanding of local conditions, of the range of resources within the community, (2) the applicant's potential for participating in workforce investment system partnerships, evidenced through its demonstrated capacity to develop ties with appropriate agencies derived from current and/or proposed relationships, and (3) the demonstrated appropriateness of these relationships to labor market and MSFW needs.

Section III—Major Activities Proposed for the Service Area

This section addresses the program approach that the applicant will use to address the needs of the MSFW population described above. The plan should describe the major program activities proposed for the service area in detail, covering the biennial period for PYs 1999 and 2000 (July 1, 1999—June 30, 2001). PY 1999 is the transition year from JTPA to WIA. Thus, the proposal should describe the plan under JTPA and the implementation activities proposed during the course of PY 1999 to ensure successful WIA implementation on or before July 1, 2000. For PY 2000 and early WIA implementation during PY 1999, identify and describe the workforce investment activities and related assistance proposed under WIA for eligible migrant and seasonal farmworkers that will be available as (a) core services, (b) intensive services, and (c) training services. The applicant should include its rationale for the approach and proposed mix of workforce investment activities and services.

Applicants must provide the following information about the services proposed to be provided for MSFWs and propose a strategy designed to provide a smooth transition from JTPA authorization to a successful implementation of WIA:

(1) JTPA program—A description of each major component of the program proposed for funding under JTPA that includes the following:

(a) A discussion of outreach and recruitment, targeting of the hard-to-serve, eligibility determination and verification, initial assessment, and the criteria used for enrollment in training or referral to other service providers; and

(b) A description of the proposed case management approach under JTPA, generally showing the proposed application of objective assessment techniques and reliance on community resources (for counseling, testing, work experience host sites, etc.) for developing individual service strategies (ISS) for each participant;

(2) WIA transitional strategy

(a) A description that primarily addresses how the negotiation strategy with the local workforce investment boards is expected to produce a successful agreement on the terms of a Memorandum of Understanding (MOU). (The executed MOU fulfills the mandatory partner requirements of the One-Stop centers under WIA.)

(b) A description of any operating arrangements with One-Stop partner agencies for those areas where some of the partners are operating prior to implementation;

(3) WIA Program—A description of each major component of the program proposed for funding under WIA that includes the following:

(a) A description of how the applicant expects to provide core services in partnership with the local One-Stop Center and the workforce investment delivery system in the service area;

(b) A description of any additional outreach to farmworkers intended by the applicant and how it anticipates making the core services of the One-Stop Center available to all who enter its field offices;

(c) When applicable, a description of endeavors to develop linkages through electronic or other means with One-Stop Centers serving farmworkers in rural areas where there are no field offices;

(d) A description of the intensive services proposed under WIA. Intensive services are defined in WIA section 134(d)(3)(C) and include such activities as group and individual counseling, skill assessment, case management of participants seeking training, objective assessment, and supportive services;

(e) A description of training activities/services proposed to be available to participants and showing that it is consistent with the skills needed by employers. This description may be a single combined JTPA and WIA description indicating only any differences proposed. Training services are defined in WIA section 134(d)(4)(D) and include occupational skills training, OJT, and entrepreneurial training; and

(f) Since WIA intensive services and WIA training services may be combined under the MSFW program, describe how a combined approach will provide for an enhanced service delivery strategy;

(4) Provide flow charts separate for JTPA and WIA, that illustrate the flow of services to participants, including outreach, intake and assessment, provision of service/enrollment in workforce investment activities, placement, and follow-up. The charts should show the participant flow when the applicant/job seeker enters through the One-Stop Center and when he/she enters through the applicant's outreach system at a local field office; and

(5) A summary of the changes to the workforce investment activities to be offered under fully implemented WIA from those to be provided under JTPA. Include a description of any youth activities proposed under the authority of WIA Section 167(d).

Rating Criteria for Section III—0 to 40 Points

The scoring will be based on the effectiveness of the proposed workforce investment activities in addressing the described farmworker needs in the proposed service areas for the biennial period with respect to (1) the program strategy to be provided under JTPA prior to WIA implementation will serve MSFWs, (2) the proposed transitional strategy to be pursued will achieve WIA implementation by showing how it is anticipated to lead to the provision of One-Stop core services to farmworkers, (3) the strategy of proposed intensive and training services to be provided under the WIA and (4) how the proposed training activities are consistent with the employer's demands for occupations within the service area.

Section IV—Program Experience

In section IV the applicant describes organization's experience (for a minimum of the two years prior to application) in administering employment and training programs both within as well as outside the proposed service area.

The information to be provided in this section should include the following for each program:

(1) The type of program;

(2) Grant, contract or agreement number;

(3) Name of the funding agency;

(4) Amount of funding, period of performance and area served;

(5) A description of the major activities of the program;

(6) Proposed and actual outcomes for each activity described; and

(7) Performance standards and actual performance results for each program listed.

Rating Criteria for Section IV—0 to 15 Points

The scoring will be based on the applicant's (1) capacity for providing the employment and training and other workforce development services that are appropriate for MSFWs, and (2) past performance of all the relevant program experience.

Section V—Administration and Staff

This section describes the applicant's organizational structure and staffing patterns.

Applicants must provide the following information in this section:

(1) An organizational chart that includes current administrative and local field offices with staffing patterns, and a description of the respective roles of staff in the context of delivering services in the proposed MSFW program. Applicants should include any provisions show any anticipated staffing changes resulting from full WIA implementation. Also include any planned provisions for hiring members of the client population and (as an attachment in section VI) relevant position descriptions.

(2) A description of administrative and program management processes which include the fiscal management systems and the program management systems (including management information systems (MIS)). For program management, be sure to include participant tracking and follow-up, program monitoring and oversight, and technical support for front line staff;

(3) For applicants that currently operate multi-state JTPA 402 programs, briefly describe which of the above program or management activities are centrally managed/processed and the benefits (fiscal and programmatic) attributed to the centralization of these activities.

Rating Criteria for Section V—0 to 15 Points

This section rates the applicant's managerial experience, and the potential for efficient and effective administration of the proposed program.

Section VI—Attachments

Include the attachments to the grant application in this section. No rating criteria apply to this section.

Part C—Review Process of Grant Applications

Panel Review

The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal using the specific criteria cited above. Panel results are advisory in nature and are not binding on the Grant Officer. The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if deemed necessary to make a selection. However, selections may be made without further contact with the applicants.

Responsibility Review

Prior to awarding a grant to any applicant, the Department will conduct a responsibility review of available records. The responsibility review relies on tests of available records to determine if the applicant has established a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the panel review process. Applicants failing to meet the requirements of this section may be disqualified for selection as grantees, irrespective of their standing in the competition. Any applicant that is not selected as a result of the Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be considered are presented in the WIA regulations.

Areas not competed

In the event that,

1. No grant applications are received for a specific service delivery area; or

2. All applications received are determined unacceptable; or

3. Where a grant agreement is not successfully negotiated with the selected grantee; the Department will offer the Governor of the State, if that State had not applied, a first right to submit an acceptable application. If the Governor does not accept this offer within 15 days after being notified, the Department may:

1. Designate another organization; or

2. Reopen the service delivery area for competitive bidding; or

3. Allocate the area's funds by formula to all other service areas; or

4. Transfer the funds for that service area to national account activities.

Notification of Non-Selection

Any applicant that is not selected as a potential grantee, or that has its grant application denied in whole or in part by the Department for receipt of funds, will be notified in writing by the Grant Officer and will be advised of all appeal rights.

Notification of Selection

The following conditions are applicable to notification of selection:

(a) Applicants selected as potential grantees will be notified in writing by the Grant Officer;

(b) The notification will invite each potential grantee to negotiate the final terms and conditions of the grant as applicable, will establish a reasonable time and place for such negotiations, and will indicate the specific service delivery area and amount of funds to be allocated under the grant;

(c) PY 99 funds will be awarded for the performance period July 1, 1999 to June 30, 2000 and PY 2000 funds (subject to continued Federal appropriation) will be awarded without competition for the period July 1, 2000 to June 30, 2001; and

(d) Grantees will be selected for a two year period ending June 30, 2001.

Annual Plan and Grant Agreement

All applicants will be provided instructions for completion of the

MSFW annual plan. This document must be completed by the selected applicants only and submitted for approval prior to the execution of the grant.

Signed at Washington, D.C., this 29 day of March, 1999.

E. Fred Tello,

Grant Officer, Division of Federal Assistance.

BILLING CODE 4510–30–U

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

[FR Doc. 99–8114 Filed 4–1–99; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decisions together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume IV:

OHIO
H990039 (APR. 2, 1999)

Volume VI:

MONTANA
MT990033 (APR. 2, 1999)
MT990034 (APR. 2, 1999)
MT990035 (APR. 2, 1999)

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

OH990013—Belmont County (See OH990008)
OH990030—Jefferson County (See OH990008)
OH990014—Stark County (See OH990008)

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Please Note: OH990001 no longer covers residential for Portage and Summit counties. See OH990008.

OH990003 no longer covers residential for Mahoning and Trumbull counties. See OH990039

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis—Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

NEW HAMPSHIRE
NH990001 (MAR. 12, 1999)
NH990003 (MAR. 12, 1999)
NH990005 (MAR. 12, 1999)
NH990007 (MAR. 12, 1999)
NEW JERSEY
NJ990002 (MAR. 12, 1999)
NJ990003 (MAR. 12, 1999)
NJ990005 (MAR. 12, 1999)
NJ990007 (MAR. 12, 1999)

Volume II:

DISTRICT OF COLUMBIA
DC990001 (MAR. 12, 1999)
DC990003 (MAR. 12, 1999)
MARYLAND
MD990001 (MAR. 12, 1999)
MD990002 (MAR. 12, 1999)
MD990010 (MAR. 12, 1999)
MD990021 (MAR. 12, 1999)
MD990028 (MAR. 12, 1999)
MD990029 (MAR. 12, 1999)
MD990034 (MAR. 12, 1999)
MD990036 (MAR. 12, 1999)
MD990037 (MAR. 12, 1999)
MD990042 (MAR. 12, 1999)
MD990046 (MAR. 12, 1999)
MD990048 (MAR. 12, 1999)
MD990056 (MAR. 12, 1999)
MD990057 (MAR. 12, 1999)
MD990058 (MAR. 12, 1999)
VIRGINIA
VA990014 (MAR. 12, 1999)
VA990025 (MAR. 12, 1999)
VA990046 (MAR. 12, 1999)
VA990048 (MAR. 12, 1999)
VA990052 (MAR. 12, 1999)
VA990078 (MAR. 12, 1999)
VA990079 (MAR. 12, 1999)
VA990092 (MAR. 12, 1999)
VA990099 (MAR. 12, 1999)

Volume III:

ALABAMA
AL990004 (MAR. 12, 1999)
AL990006 (MAR. 12, 1999)
AL990008 (MAR. 12, 1999)
AL990017 (MAR. 12, 1999)
AL990033 (MAR. 12, 1999)
GEORGIA

GA990003 (MAR. 12, 1999)
GA990050 (MAR. 12, 1999)
GA990065 (MAR. 12, 1999)
GA990073 (MAR. 12, 1999)
GA990085 (MAR. 12, 1999)
GA990086 (MAR. 12, 1999)
GA990087 (MAR. 12, 1999)
GA990088 (MAR. 12, 1999)
KENTUCKY
KY990001 (MAR. 12, 1999)
KY990002 (MAR. 12, 1999)
KY990003 (MAR. 12, 1999)
KY990004 (MAR. 12, 1999)
KY990006 (MAR. 12, 1999)
KY990007 (MAR. 12, 1999)
KY990025 (MAR. 12, 1999)
KY990027 (MAR. 12, 1999)
KY990028 (MAR. 12, 1999)
KY990032 (MAR. 12, 1999)
KY990035 (MAR. 12, 1999)
KY990039 (MAR. 12, 1999)
KY990044 (MAR. 12, 1999)

Volume IV:

ILLINOIS
IL990001 (MAR. 12, 1999)
IL990002 (MAR. 12, 1999)
IL990003 (MAR. 12, 1999)
IL990004 (MAR. 12, 1999)
IL990005 (MAR. 12, 1999)
IL990006 (MAR. 12, 1999)
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IL990067 (MAR. 12, 1999)
IL990068 (MAR. 12, 1999)
IL990069 (MAR. 12, 1999)
IL990070 (MAR. 12, 1999)
INDIANA
IN990001 (MAR. 12, 1999)
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IN990020 (MAR. 12, 1999)
IN990021 (MAR. 12, 1999)
IN990024 (MAR. 12, 1999)
IN990059 (MAR. 12, 1999)
IN990060 (MAR. 12, 1999)
IN990061 (MAR. 12, 1999)
OHIO
OH990001 (MAR. 12, 1999)
OH990002 (MAR. 12, 1999)
OH990003 (MAR. 12, 1999)
OH990007 (MAR. 12, 1999)
OH990008 (MAR. 12, 1999)
OH990028 (MAR. 12, 1999)
OH990029 (MAR. 12, 1999)
OH990034 (MAR. 12, 1999)
OH990035 (MAR. 12, 1999)
OH990036 (MAR. 12, 1999)

Volume V:

NEBRASKA
NE990001 (MAR. 12, 1999)
NE990003 (MAR. 12, 1999)
NE990009 (MAR. 12, 1999)
NE990011 (MAR. 12, 1999)
NE990019 (MAR. 12, 1999)

Volume VI:

IDAHO
ID990001 (MAR. 12, 1999)
MONTANA
MT990003 (MAR. 12, 1999)
MT990006 (MAR. 12, 1999)
MT990007 (MAR. 12, 1999)
MT990008 (MAR. 12, 1999)
NORTH DAKOTA
ND990002 (MAR. 12, 1999)
ND990004 (MAR. 12, 1999)
OREGON
OR990001 (MAR. 12, 1999)
OR990017 (MAR. 12, 1999)
WASHINGTON
WA990005 (MAR. 12, 1999)
WA990008 (MAR. 12, 1999)

Volume VII:

HAWAII
HI990001 (MAR. 12, 1999)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determination issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscription may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 25th day of March 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–7829 Filed 4–1–99; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Meetings

AGENCY: Legal Services Corporation.

ACTION: Notice of public hearings of Commission authorized by the Legal Services Corporation (''LSC'' or ''Corporation'') to study the issue of when aliens must be present in the United States to be eligible for legal assistance from Corporation-funded programs.

SUMMARY: The Corporation has formed and authorized a Commission, known as the Erlenborn Commission, to hold public hearings and study the meaning of a statutory requirement in the Corporation's appropriations act that an alien be present in the United States in order to be eligible for legal assistance from LSC-funded programs (hereinafter referred to as ''the presence requirement''). The first hearing of the Commission was held at Duke University in Raleigh, North Carolina on

March 27, 1999. This notice provides information on the second public hearing and seeks written requests from individuals and organizations to provide testimony at the hearing. The public hearings are intended to aid the Commission compile a factual record and prepare findings to be transmitted to the Corporation's Board of Directors, along with recommendations, to inform the Corporation's interpretation of the presence requirement and to provide the basis for any necessary and appropriate remedial action, such as a rulemaking or a request for legislative action by the Congress.

DATES: The second public hearing will be held by the Commission on April 10, 1999, at Stanford University, in Palo Alto, California. Requests to provide oral testimony at the second public hearing are due on or before April 5, 1999.

ADDRESSES: Requests to provide oral testimony may be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250. Requests may be faxed at 202–336–8952 or e-mailed to adawayn@smtp.lsc.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, 202–336–8817.

SUPPLEMENTARY INFORMATION: On February 18, 1999, the Corporation published a notice in the **Federal Register** of the formation of a Commission to study the issue of when aliens must be present in the United States to be eligible for legal assistance from Corporation-funded programs. See 64 FR 8140 (Feb. 18, 1999). The February notice requested written comments on the alien eligibility matter and gave notice that comments were due at the Corporation on or before March 22, 1999. Id. The Corporation published a second notice on March 15, 1999, which provided information on the first hearing that was held by the Commission on March 27, 1999. See 64 FR 12822 (March 15, 1999). This notice provides information on the second hearing and solicits requests to provide oral testimony. Oral testimony at the hearing will be at the invitation of the Commission.

The second hearing has been scheduled for Saturday, April 10, 1999, and will be held in Building 60, Room 61H at Stanford University, located at 450 Serra Mall, Stanford, California.

Requests to provide oral testimony at the second hearing must be submitted in writing and are due at the Corporation on or before April 5, 1999.

Dated: March 30, 1999.

Suzanne B. Glasow,

Senior Assistant General Counsel.

[FR Doc. 99–8222 Filed 3–31–99; 12:41 pm]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter 99–X on Promoting Subcontracting Opportunities and Administering Subcontracting Plans

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is requesting comments on a policy letter supplementing the Federal Acquisition Regulation (FAR) to further promote subcontracting opportunities for small, small disadvantaged, and women-owned small business concerns.

SUMMARY: This policy letter supersedes and cancels OFPP Policy Letters 80–1, 80–2, and 80–4. It supplements FAR coverage of subcontracting opportunities for small, small disadvantaged, and women-owned small business concerns. The current trend toward contract consolidation may impact these small business concerns' ability to compete as prime contractors. We are issuing this policy letter to enhance subcontracting opportunities for such concerns.

COMMENT DATE: Comments must be received on or before June 1, 1999.

ADDRESSES: Please submit comments to Deidre A. Lee, Administrator, Office of Federal Procurement Policy, Old Executive Office Building, Room 352, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Williams at 202–395–3302.

Deidre A. Lee,

Administrator.

Policy Letter 99–X to the Heads of Executive Departments and Establishments

Subject: Policy on Promoting Subcontracting Opportunities and Administering Subcontracting Plans

1. *Purpose.* This directive supplements Federal Acquisition Regulation (FAR) coverage of subcontracting plans required by section 8(d) of the Small Business Act (15 U.S.C. 637(d)) as amended by the Federal Acquisition Streamlining Act of 1994 (FASA).

2. *Supersession Information.* This Policy Letter supersedes and cancels OFPP Policy Letter 80–1, ''P.L. 95–507, Section 211, Subcontracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives,'' dated January 24, 1980; OFPP Policy Letter 80–2, ''Regulatory Guidance on Section 211 of Public Law 95–507,'' dated April 29, 1980; Supplement No. 1 to Policy Letter 80–2, dated May 29, 1981; and OFPP Policy Letter 80–4, ''Women's Business Enterprise Program,'' dated April 29, 1980.

3. *Authority.* This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405.

4. *Definitions.*

a. The definitions of commercial plan, failure to make a good faith effort to comply with the subcontracting plan, individual contract plan, master plan, small business concern, small business subcontractor, small disadvantaged business concern, and women-owned small business concern have the same meaning as that provided by FAR Part 19.

b. The term commercial item has the same meaning as that provided by FAR section 2.101.

c. The term subcontract has the same meaning as that provided by FAR section 19.701. However, purchases from a corporation, company or division of a prime contractor that are affiliates as defined in 13 C.F.R. 121.103 are not considered ''subcontracts.''

5. *Policy.* This document establishes policies for promoting subcontracting opportunities and administering subcontracting plans for small business, small disadvantaged business, and women-owned small business concerns. Nothing in this Policy Letter precludes an agency from establishing additional requirements regarding subcontracting plans.

6. *Solicitation and Subcontracting Plan Requirements.*

a. Determining the Need for a Subcontracting Plan. In addition to the requirements contained at FAR section 19.705–2, the solicitation shall inform prospective offerors that the estimated value of indefinite delivery contracts/task order and delivery order contracts will be used to determine if a subcontracting plan is required.

b. Reviewing the Subcontracting Plan. In addition to the procedures contained at FAR section 19.705–4, contracting officers shall take the following actions:

(1) Require an offeror that proposes lower goals than the target goals stated in the solicitation to explain why it cannot achieve the stated goals.

(2) Advise offerors of the availability of the following sources of information on potential small, small disadvantaged, and women-owned small business concern subcontractors:

(a) The U.S. Small Business Administration (SBA) Procurement Marketing and Access Network (PRONet) (http://pro-net.sba.gov/), a free on-line internet-based search engine that provides access to the profiles of more than 170,000 small businesses.

(b) The Department of Commerce, Minority Business Development Agency's (MBDA) Phoenix Data Base or the Opportunity Data Base at www.mbda.gov.

(c) State, county, and city government minority business offices.

(d) Small, minority, and women business associations.

(e) Local chambers of commerce.

(f) DOD's Centralized Contractor Registration Data Base.

(3) Encourage offerors to synopsize in the Commerce Business Daily (CBD) or advertise in trade newspapers, journals, or other communication media.

(4) Require offerors to identify other contracts that had subcontracting plans. Contact the contracting officers who administered those earlier plans to determine whether the objectives were realized and required reports were submitted on time. Overall compliance should be considered, not merely whether the goals were met.

(5) Ensure that subcontracting master plans meet the following conditions:

(a) The SBA procurement center representative has been given an opportunity to comment on the master plan and,

(b) The subcontract goals for small, small disadvantaged, and women-owned small business concerns are specifically set forth in each contract or modification.

(6) Follow the requirements of FAR clause 52.219.9 entitled ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan'' if the award is expected to exceed $500,000 ($1 million for construction of a public facility), unless the acquisition is reserved for small business concerns, no subcontracting opportunities exist, the contract will be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or the contract is with Federal Prison Industries or the blind or severely disabled and is awarded under the provisions of the Javits-Wagner-O'Day Act. The clause shall apply to all other entities including large businesses; state and local governments; non-profit organizations; public utilities; educational institutions, including Historically Black Colleges and Universities (HBCUs), Minority Institutions (MIs), and foreign-owned firms that receive federal contracts if the portion of the contract to be performed in the United States exceeds the above thresholds. However, subcontracting plans are not required from HBCUs and MIs that receive contract awards above the thresholds from the Department of Defense (DOD), the Coast Guard, and the National Aeronautics and Space Administration (NASA).

(7) Ensure that small disadvantaged and women-owned small business concern dollars are included in the small business category. This means, for example, that a small disadvantaged business concern owned by a woman is counted as a small business concern, a small disadvantaged business concern, and a women-owned small business concern.

(8) Ensure that the actual achievements on the SF 294, Subcontracting Report for Individual Contracts, are reported on the same basis as the goals set forth in the contract.

(9) When subcontractors are required to adopt subcontracting plans (see FAR section 19.704(a)(9)), require offerors to review, approve, and monitor their subcontractors' compliance with such plans. Copies of subcontractors' plans must be retained by the prime contractor until subcontract completion. A ''certificate of compliance'' or statement from the subcontractor that it has a subcontracting plan does not satisfy this requirement.

c. Award of Contracts or Contract Modifications.

(1) The Small Business Act treats contracts and modifications separately. The following policies apply to contract modifications other than options. If a subcontracting plan is not required at the time of award because the contract value is below the threshold, a subcontracting plan will not be required even if a subsequent modification increases the contract value to an amount exceeding the threshold. The only exception to this rule is when the contract modification itself exceeds the threshold. Moreover, it is not necessary to obtain another subcontracting plan for a modification exceeding the applicable threshold if the contract already includes a subcontracting plan. However, the original plan must be modified to adjust the goals to account for the new effort.

(2) The following policies apply to contractors and subcontractors that no longer meet the size or ownership criteria for a small, small disadvantaged, or women-owned small business concern as a result of growth, a buy-out, or a merger during the period of contract performance:

(a) A subcontracting plan is not required of any former small business prime contractor that, during contract performance, no longer meets the definition of a small business concern. Similarly, the requirement to submit periodic reports does not apply. However, a subcontracting plan is required if a prime contractor erroneously considered itself small at the time of contract award. Under this circumstance, the contracting officer should request a subcontracting plan from the contractor and the responsibility to submit periodic reports applies.

(b) A prime contractor may continue to report subcontract dollars as a small, small disadvantaged, or women-owned small business concern award for the duration of the subcontract, including all option years.

d. Contract Awards Involving Commercial Plans.

(1) Commercial plans, as described in FAR section 19.704(d), are useful for companies that normally rely on their existing network of suppliers for all of their business and do not enter into specific subcontracts to fill Government contracts. Commercial plans may apply to the production of the offeror's entire company, or may be limited to a corporation, company, division, plant or product line.

(2) Commercial plans are recognized as one way to reduce the burden of government-unique requirements for companies that provide commercial items under Government contracts and subcontracts.

(3) Agencies shall inform prospective offerors in solicitations expected to trigger the requirements for a subcontracting plan of the opportunity for them and/or their subcontractors to develop commercial plans if they are supplying commercial items.

(4) Offerors shall state if there is a pre-approved plan and for which item(s) and/or service(s) the plan has been approved.

(5) The contracting officer shall obtain a copy of the plan and approval document from a contractor who has a commercial plan previously approved by another agency's contracting activity or another federal agency.

e. Contract Administration of Subcontracting Plans. In addition to the requirements at FAR section 19.706, administrative contracting officers shall:

(1) Monitor a contractor's compliance with the SF 294 report requirements. The SF 294 is used to evaluate the contractor's progress toward meeting the subcontracting goals established in an individual contract plan. The contracting officer shall pay particular attention to reviewing the SF 294 required at contract completion. The SF 294 is not required for contracts with an approved commercial plan.

(2) Ensure receipt of and review the SF 295 (Summary Subcontracting Report). The SF 295 is used to evaluate the contractor's progress toward meeting the subcontracting goals in commercial plans. The SF 295 also is used for both commercial plans and individual plans to summarize all subcontract awards under contracts with a particular federal agency.

7. *Best Practices.* For purposes of this Policy Letter, best practices are practical techniques gained from experience that agencies may use to improve subcontracting plans. The best practices are not mandatory and should not form the basis for Inspector General or other audit reviews.

a. Subcontract Plan Evaluation.

(1) DOD, Coast Guard, and NASA regulations require that the subcontracting plan be a factor in evaluating bids or competitive proposals (10 U.S.C. 2323(h)(2)) under solicitations that require a plan. Other agencies may use this approach as appropriate. For example, the offeror's subcontracting plan may be a separate factor/subfactor in complex, large dollar negotiated acquisitions, or consolidated procurements, where substantial subcontracting opportunities exist. As a separate evaluation factor/subfactor (apart from the offeror's technical, management, and cost proposal), the subcontracting plan should account for a meaningful percentage or weight of the total evaluation. In cases where small businesses are bidding against large contractors and small businesses are not required to have a plan, contracting officers shall give small businesses a rating equal to the maximum points available for those evaluation factors/subfactors.

(2) Agencies should define the parameters by which a subcontracting plan will be evaluated. The parameters may include the following:

(a) The extent to which the plan expresses definitive commitments to subcontracting with small, small disadvantaged, and women-owned small business concerns. Greater credit may be given to an offeror who identifies the names of the intended small, small disadvantaged, and women-owned small business concerns with the initial submission of its plan, and/or provides

''letters of commitment'' to subcontract with such firms.

(b) The extent to which the plan provides a significant share of subcontracting dollars to small, small disadvantaged, and women-owned small business concerns.

(c) The quality of the offeror's overall plan, including its goals and methods for achieving those goals.

(d) For individual contract plans, the offeror's procedures for reviewing, approving, and monitoring its subcontractors' compliance with subcontracting plans.

(e) The extent to which the offeror utilizes small business incumbents with proven performance records as subcontractors under consolidated contracts for services. Utilizing incumbents allows the government to retain institutional knowledge, and small businesses to continue providing quality services at advantageous prices.

(f) For mission-specific contracts such as high technology and research, the extent to which the offeror plans to award subcontracts for other than routine support services.

(g) The extent to which prime contractors have excelled in achieving subcontracting goals or participated in a Mentor Protégé Program.

b. Use of Past Performance in Source Selection.

(1) The contracting officer may obtain information from the cognizant contract administration office concerning an offeror's past performance with respect to subcontracting with small, small disadvantaged, and women-owned small business concerns. In addition, the contracting officer may seek the advice of the agency's small business representative and/or check with the SBA Area Director for Government Contracting or the Defense Contract Management Command to determine the offeror's current subcontracting performance rating.

(2) In evaluating past performance, the contracting officer may consider the following:

(a) The extent to which goals were achieved on contracts completed during the current fiscal year and the two previous fiscal years, with greater weight assigned to those contracts completed most recently.

(b) The extent to which the offeror's subcontracting efforts were consistent with its subcontracting plan or the extent to which the offeror made a good faith effort to comply with its plan.

(c) The extent to which the offeror required its large business subcontractors to adopt similar plans under the contract flow-down requirement.

(d) The extent to which an offeror complied with the timely and accurate submission of the required SF 294 and SF 295.

(e) The extent to which the offeror participates in a Mentor Protégé Program.

c. Awards and Incentives.

(1) Contracting activities, in conjunction with Heads of Offices of Small and Disadvantaged Business Utilization, may establish an awards program for contracting officials and prime contractors who do an outstanding job of promoting small, small disadvantaged, and women-owned small business concerns as subcontractors. Recognition may be in the form of plaques, certificates, monetary awards, etc. The awards program may, among other things, recognize:

(a) Prime contractors that exceed all of their subcontracting goals;

(b) Contracting officials who are exemplary in administering and enforcing compliance with subcontracting plans, and

(c) Small business and contracting specialists who demonstrate outstanding outreach efforts to promote the use of small, small disadvantaged, and women-owned small business concerns as subcontractors.

(2) In addition to an awards program, contracting activities may consider incentives such as:

(a) In contracts containing the Liquidated Damages clause at FAR section 52.219–16, requiring that a certain percentage of the contract value be subcontracted to small business concerns. If the percentage is not met, the contracting activity may assess liquidated damages.

(b) Making the administration and enforcement of subcontracting plans a critical factor in the contracting officer's performance appraisal.

(c) Negotiating alternative payment schedules with prime contractors that offer to provide substantial subcontracting opportunities to small, small disadvantaged, and women-owned small business concerns. This incentive also could be applied to prime contractors that agree to mentor small business concerns under a Mentor Protégé Program.

(d) Reducing inspection, monitoring, and auditing of subcontracting compliance for prime contractors that have an outstanding past performance record. For example, a contractor that receives an outstanding rating on a subcontracting compliance review could receive a follow-up review the next year that consists of a statistical desk audit only. The SBA has authorized its field office staff to exempt outstanding contractors from a formal compliance review for three years as long as the SF 295 shows no deterioration in the dollars awarded to small, small disadvantaged, and women-owned small business concerns during that period.

d. Goals.

(1) The contracting officer may use target goals in solicitations to inform potential offerors of what the Government expects in an acceptable subcontracting plan.

(2) The contracting officer may specify subcontracting percentage goals to increase small, small disadvantaged, and women-owned business concern participation in newly consolidated contracts for non-commercial items/services. The percentages may be determined on a contract-by-contract basis based on market research and requests for information from potential offerors and potential small business subcontractors.

(3) In addition to the statutory goals for small, small disadvantaged, and women-owned small business concerns, which are based on the projected value of the prime and subcontract awards proposed by the offeror, the contracting officer may also establish subcontracting goals based on the overall value of the procurement. (Note: In some cases, this may not be a realistic approach. The dollar value of the contract may have no effect on the potential for subcontracting.)

(4) The contracting officer may consider increasing the small, small disadvantaged, and women-owned small business concern participation goals commensurate with the size of the contract. For example, the larger the degree of contract aggregation, the higher the goals for small, small disadvantaged and women-owned small business concern participation may be set.

8. *Responsibilities.* The Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in final form in the **Federal Register**. Promulgation of final regulations within that 210-day period shall be considered issuance in a ''timely manner'' as prescribed in 41 U.S.C. 405(b).

9. *Information Contact.* Questions regarding this Policy Letter should be directed to Linda Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone 202–395–3302, facsimile 202-395–5105.

10. *Judicial Review.* This Policy Letter only provides policy guidance to agencies in the exercise of their discretion concerning Federal contracting. It does not interpret the Constitution or any law. It is not intended to create any legal right or any basis on which to sue the United States or its representatives.

11. *Effective Date.* The Policy Letter is effective 30 days after the date of issuance.

[FR Doc. 99–8122 Filed 4–1–99; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

OFPP Policy Letter 99–1 on Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: Notice of proposed policy letter.

SUMMARY: OFPP is requesting comments on proposed OFPP Policy Letter 99–1. This letter contains guidance on implementing government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. The Policy Letter also provides guidance on reporting requirements that will help the Small Business Administration (SBA)

determine whether executive agencies are reaching these goals. This Policy Letter, when issued in final, will supersede OFPP Policy Letter 91–1.

COMMENT DATE: We must receive comments on or before June 1, 1999.

ADDRESSES: Send your comments to Deidre A. Lee, Administrator, Office of Federal Procurement Policy, Old Executive Office Building, Room 352, Washington, DC 20503. Send e-mail comments to Keith Coleman at kcoleman@oa.eop.gov.

FOR FURTHER INFORMATION CONTACT: Keith Coleman at 202–395–7209 or Linda Williams at 202–395–3302.

SUPPLEMENTARY INFORMATION: We issued an earlier Policy Letter, 91–1, entitled ''Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts'' on March 11, 1991. That policy letter addressed sections 502 and 503 of the Business Opportunity Development Act of 1988. Section 502 establishes government-wide goals for contract awards to small business concerns and small disadvantaged businesses. Section 503 requires the President to include the agencies' actual goal achievements in the ''State of Small Business'' report. The report also includes an analysis of an agency's failure to achieve the goals, and the number and dollar value of prime contracts awarded to small firms through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards.

We need to issue this new policy letter because of statutory changes made in 1994 and 1997. Section 7106 of the Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. Section 603 of the Small Business Reauthorization Act of 1997 increases the annual government-wide goal for prime contract awards to small business concerns from not less than 20 percent to not less than 23 percent. The Act also adds a 3 percent HUBZone small business goal phased-in over the next 5 years.

This Policy Letter, when issued in final, will supersede OFPP Policy Letter 91–1. This proposed Policy Letter supports the Small Business Administration's (SBA) policies of establishing its own guidance on the new goals, establishing with each agency mutually acceptable prime contract goals for awards made under section 8(a) of the Small Business Act, and using procurement data in the Federal Procurement Data System to measure accomplishments rather than requiring agencies to provide this information in separate reports.

We request comments on the proposed policy letter.

Deidre A. Lee,

Administrator.

Policy Letter 99–1

To the Heads of Executive Departments and Establishments

Subject: Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts.

1. *Purpose.* This Policy Letter provides guidance to Executive branch departments and agencies on government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses and women-owned small businesses (''small businesses''). It also provides guidance on reporting requirements that will help the Small Business Administration (SBA) determine whether agencies are reaching these goals.

2. *Supersession Information.* This Policy Letter replaces OFPP Policy Letter 91–1, ''Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts,'' dated March 11, 1991.

3. *Authority.* This policy letter is based on the Small Business Act, the Office of Federal Procurement Policy Act, the Business Opportunity Development Reform Act of 1988, the Federal Acquisition Streamlining Act of 1994, and the Small Business Reauthorization Act of 1997.

4. *Background.* The Small Business Act requires executive agencies, in consultation with SBA, to develop annual goals for contract awards to small businesses. SBA monitors agency performance and reports their achievements to the President. The Office of Federal Procurement Policy Act, 41 U.S.C. 405, empowers the Administrator for Federal Procurement Policy to prescribe government-wide procurement policies.

The Business Opportunity Development Reform Act establishes government-wide goals for small businesses and small disadvantaged businesses and requires the President to include the agencies' actual goal achievements in the ''State of Small Business'' report. The report must also include an analysis of any failure to achieve the goals, and the number and dollar value of prime contracts awarded to small businesses through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards. The Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. The Small Business Reauthorization Act of 1997 (SBRA) adds a 3 percent HUBZone small business goal phased-in over the next 5 years. It also increases the annual government-wide goal for prime contract awards to small business concerns to not less than 23 percent.

In March 1991, the OFPP issued Policy Letter 91–1 to implement government-wide goals for small businesses and small disadvantaged businesses. This proposed Policy Letter includes the guidance from Policy Letter 91–1, and also implements the more recent statutory provisions of FASA and SBRA.

This proposed Policy Letter also supports the Small Business Administration's (SBA) policies of establishing its own guidance on the new goals, establishing with each agency mutually acceptable prime contract goals for awards made under section 8(a) of the Small Business Act, and using procurement data in the Federal Procurement Data System to measure accomplishments rather than requiring agencies to provide this information in separate reports.

5. *Policy.* Prior to the beginning of each fiscal year, the SBA will mutually establish with each agency goals for participation by small business, small disadvantaged business, HUBZone small business, and women-owned small businesses. The agencies' cumulative goals shall count toward accomplishment of the government-wide goals.

6. *Goals.*

a. The government-wide small business goal is not less than 23 percent of the total value of all prime contracts awarded for the fiscal year. This includes all the goals for the specific categories of small business.

b. The following table lists the specific goals for small disadvantaged and women-owned small businesses.

The goal for...	is...
small disadvantaged business prime contracts.	not less than 5 percent of the value of all prime contract awards.
small disadvantaged business subcontracts.	not less than 5 percent of the value of all subcontract awards.
women-owned small business prime contracts.	not less than 5 percent of the value of all prime contract awards.

The goal for...	is...
women-owned small business subcontracts.	not less than 5 percent of the value of all subcontract awards.

c. The following table lists the specific goals for HUBZone small businesses.

For FY...	the percentage goal is at least...
1999	1 percent of the value of all prime contract awards
2000	1.5 percent of the value of all prime contract awards
2001	2 percent of the value of all prime contract awards
2002	2.5 percent of the value of all prime contract awards
2003 and after	3 percent of the value of all prime contract awards.

d. There is no specific statutory requirement to establish goals for awards made pursuant to section 8(a) of the Small Business Act. However, agencies must mutually establish with SBA acceptable goals for awards to 8(a) firms.

e. Agencies may count prime contract awards to small businesses toward more than one goal. Prime contract awards to small businesses, women-owned small businesses, small disadvantaged businesses, 8(a) firms, and HUBZone small businesses count toward the government-wide small business goal.

7. *Responsibilities.*

a. Agency Responsibilities.

(1) Each department or agency must negotiate annually in good faith with the SBA to establish its specific goals for small business, woman-owned small business, small disadvantaged business, HUBZone small business, and 8(a) firms. These goals should provide the maximum practicable opportunity for all these types of small businesses to participate in contracts let by the agency. SBA's annual guidance on establishing small business goals, entitled ''Guidelines on Goals Under Procurement Preference Programs,'' covers the goal-setting process.

(2) At the end of the fiscal year, agencies must submit a narrative report to SBA analyzing its achievements and any failures to achieve its small business goals for the year. The report must also include plans for improving performance in the next year.

(3) Agencies must ensure that their prime and subcontract data in the Federal Procurement Data System is accurate and complete in order to measure their small business goal accomplishments.

b. SBA Responsibilities.

(1) Prior to the beginning of each fiscal year, the SBA will work with each agency to establish mutually acceptable goals for the different categories of small business.

(2) SBA must ensure that the mutually established cumulative goals for all agencies meet or exceed the government-wide small business goal of 23 percent.

(3) SBA must compile and analyze agencies' achievements against their individual small business procurement goals and report the results to the President.

(4) SBA will use data in the Federal Procurement Data System to determine:

(i) agencies' success in reaching their procurement goals for prime and subcontracts;

(ii) the number and dollar value of prime contracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns through:

- Noncompetitive negotiation,
- Competition restricted to small disadvantaged business concerns,
- Competition restricted to small business concerns and HUBZone small business concerns, and
- Unrestricted competitions; and

(iii) the dollar value of subcontracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

8. *Information Contact.* Direct any questions regarding this Policy Letter to Linda Williams (202–395–3302), or Keith Coleman (202–395–7209).

9. *Effective Date.* The Policy Letter is effective 30 days after issuance.

[FR Doc. 99–8123 Filed 4–1–99; 8:45 am]

BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

In the Matter of Duke Energy Corporation; (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

The Duke Energy Corporation (Duke/the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, that authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 (Oconee), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities consist of pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

II

Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G states that ''[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Pressurized water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection (LTOP) systems in order to protect the reactor coolant pressure boundaries (RCPBs) from being operated outside of the boundaries established by the P–T limit curves and to provide pressure relief of the RCPBs during low temperature overpressurization events. The licensee is required by the Oconee Units 1, 2, and 3 Technical Specifications (TSs) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P–T limit curves in the Oconee Units 1, 2, and 3 TSs.

In the submittal of October 15, 1998, the licensee requested that the staff exempt Oconee Units 1, 2, and 3 from the application of specific requirements of 10 CFR part 50, § 50.60 and appendix G. Specifically, the licensee proposed to use the American Society of Mechanical Engineers (ASME) Code Case N–514 to permit setting the pressure setpoint of the facility's LTOP such that the P–T limits required by 10 CFR part 50, appendix G could be exceeded by 10 percent during a low temperature overpressure transient.

The licensee noted that the underlying purpose of the subject regulations is to establish limits to protect the RPVs from brittle failure during low temperature operation and the LTOP provides a physical means of protecting these limits.

The Reactor Coolant System P–T operating window at low temperatures is defined by the LTOP setpoint. Implementation of an LTOP setpoint without the additional margin of 10

percent allowed by the ASME Code Case N–514 would restrict the P–T operating window and would potentially result in undesired actuation of the LTOP system. This constitutes an unnecessary burden that can be alleviated by the application of the Code Case and reduce the potential for an undesired lift of the LTOP valve.

The licensee stated that establishing the LTOP pressure setpoints in accordance with the provisions in Code Case N–514 would provide an acceptable level of safety against overpressurization events of the Oconee RPVs. The licensee stated that establishing the LTOP setpoints in accordance with N–514 provisions such that the vessel pressure would not exceed 110 percent of the P–T limit allowables would still provide an acceptable level of safety and mitigate the potential for an inadvertent actuation of the LTOP. The Code Case dictates that when the LTOP system is enabled, the peak pressure resulting from an LTOP design-basis transient will not exceed 110 percent of the pressure limits established by the P–T limit curves for the plant, as required by 10 CFR part 50, appendix G, and by appendix G to the Code. The Code Case also requires that the LTOP system be enabled at a temperature of 200 °F or at a temperature value equivalent to the sum of the limiting adjusted reference temperature (ART) + 50 °F, whichever is greater. The staff has previously found for several other nuclear power plants that Code Case N–514 provides an ''acceptable level of safety'' based on the amount of conservatism that has been explicitly incorporated into the methodologies for generating P–T limit curves, as prescribed in 10 CFR part 50, appendix G; appendix G to the Code; and RG 1.99, Revision 2. The conservatism includes: (1) a safety factor of 2 on the pressure stresses; (2) a margin factor applied to the calculation of ART values in accordance with the methodology of RG 1.99, Revision 2; (3) an assumed flaw of one-fourth of the vessel section thickness from the inside wetted surface in the vessel beltline region with a 6:1 aspect ratio; and (4) a limiting material toughness based on dynamic crack arrest data. The staff has reviewed the proposed application of this Code Case to Oconee Units 1, 2, and 3, and found it to be acceptable.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. As stated in 10 CFR 50.12(a)(2)(ii), special circumstances exist when application of the regulation would not serve or is not necessary to achieve the underlying purpose of the rule. The staff has determined that an exemption would be required to approve the use of Code Case N–514. The staff has further determined that special circumstances are present, in that application of the regulation under these circumstances is not necessary to achieve the underlying purpose of the rule and use of Code Case N–514 would meet the underlying intent of the regulation. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G; appendix G of the Code; and RG 1.99, Revision 2, the staff concluded that permitting the LTOP setpoints to be established at the level specified in the Code Case (e.g., less than or equal to 110 percent of the limit defined by the P–T limit curves) would provide an adequate margin of safety against brittle failure of the RPVs. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–514 may be used to establish the LTOP setpoints for the Oconee Units 1, 2, and 3 reactor coolant system.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Duke an exemption from the requested specific requirements of 10 CFR part 50, § 50.60 and appendix G, for Oconee Nuclear Station, Units 1, 2, and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (64 FR 14950, dated March 29, 1999).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of March 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–8163 Filed 4–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Severe Accident Managemet; Notice of Meeting

The ACRS Subcommittee on Severe Accident Management will hold a meeting on April 30, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of this meeting may be closed to public attendance to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552(b)(c)(4).

The agenda for the subject meeting shall be as follows:

Friday, April 30, 1999—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the Westinghouse Owners Group's proposed revisions to the Core Damage Assessment guidelines and Post Accident Sampling System requirements for Westinghouse Electric Company nuclear power plants. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Owners Group, the NRC

staff, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 25, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–8162 Filed 4–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority

[Docket No. 50–259]

Browns Ferry Nuclear Plant, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated April 5, 1998, filed on behalf of the Union of Concerned Scientists (Petitioner) by Mr. David A. Lochbaum, pursuant to Title 10 of the *Code of Federal Regulations,* Section 2.206 (10 CFR 2.206). The Petition requests the U.S. Nuclear Regulatory Commission (NRC) to (1) revoke the operating license for Browns Ferry Nuclear Plant, Unit 1; (2) require the Tennessee Valley Authority (TVA) to submit either a decommissioning plan or a lay-up plan for Unit 1; (3) conduct NRC inspections at Browns Ferry Unit 1 against the decommissioning plan or the lay-up plan; and (4) hold a hearing in the Washington, DC, area.

The Director, Office of Nuclear Reactor Regulation, has determined to deny in part and grant in part the Petition, for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–99–06). The complete text that follows this notice is available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2210 L Street, NW., Washington, D.C., and at the local public document room for the Browns Ferry Nuclear Plant at the Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review. As provided for by 10 CFR 2.206(c), the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 29th day of March 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation. 9

Director's Decision Pursuant to 10 CFR 2.206 (DD–99–06)

I. Introduction

On April 5, 1998, Mr. David A. Lochbaum filed a petition [1], pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), on behalf of the Union of Concerned Scientists (Petitioner).

Petitioner requested the Nuclear Regulatory Commission (NRC) to (1) revoke the operating license for Browns Ferry Nuclear Plant, Unit 1; (2) require the Tennessee Valley Authority (TVA) to submit either a decommissioning plan or a lay-up plan for Unit 1; (3) conduct NRC inspections at Browns Ferry Unit 1 against the decommissioning plan or the lay-up plan; and (4) hold a hearing in the Washington, DC, area.

As the basis for the request, Petitioner asserts that because Unit 1 has been on ''administrative hold'' since June 1, 1985, and has not operated since then, revoking the operating license and requiring relicensing if TVA later decides to restart Unit 1 is a better and safer process than is the current restart process of Inspection Manual Chapter (IMC) 0350. Further, a decommissioning plan would provide assurance that the irradiated fuel is stored safely and that Units 2 and 3 are sufficiently independent of Unit 1 for safe operation.

Petitioner notes that while Unit 1 has been in administrative hold status, the NRC has issued numerous bulletins, generic letters, and information notices. TVA's typical action in response to these NRC communications is to delay addressing the issues until prior to returning the unit to service. Petitioner notes a similar response was provided by TVA to the NRC's letter of October 9, 1996, which requested information pertaining to the adequacy, availability, and control of design-basis information [2, 3]. Petitioner speculates that the configuration management problems and plant material condition that led to the shutdown in 1985 only could have worsened since then. Thus, Petitioner believes that requiring relicensing for Unit 1 if the decision is made to restart would ''wipe the licensing slate clean and allow TVA, the NRC, and the public to examine restarting the plant without the burden of unraveling the mess caused by more than a decade of licensing limbo.'' Petitioner further asserts that the NRC cannot meaningfully inspect a facility in a degraded condition and in an uncertain licensing status.

On April 29, 1998, the NRC acknowledged receipt of the petition and informed Petitioner that the petition had been assigned to the Office of Nuclear Reactor Regulation (NRR) for response. Petitioner was informed that the request for a hearing was denied because the petition did not provide new information that raised the potential for a significant safety issue and did not allege any violations of NRC requirements. Petitioner was advised that any new information that should be considered by the NRC in evaluating the issues raised in the petition should be provided promptly to the NRC in writing.

On June 5, 1998, Petitioner reiterated the request for a hearing and cited NRC Bulletin 94–01, ''Potential Fuel Pool Draindown Caused by Inadequate Maintenance Practices at Dresden Unit

[1] The petition can be viewed and downloaded from the NRC World Wide Web page (http://www.nrc.gov/NRC/PUBLIC/2206/petitions/g980199/g980199.html). Copies of the petition also are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Athens Public Library, South Street, Athens, Alabama 35611.

[2] NRC letter from James M. Taylor, Executive Director for Operations, to Craven Crowell, Chairman, TVA Board of Directors, dated October 9, 1996.

[3] This letter was sent to TVA on Browns Ferry Units 2 and 3, Sequyoah Units 1 and 2, and Watts Bar Units 1 and 2 dockets. It was not sent on the Browns Ferry Unit 1 docket because that facility was not operating, and it was known to the NRC that extensive design-basis reconstitution will be required before the facility may be restarted.

[4] The NRC concluded that the petition raised novel issues with respect to maintaining an operating license for a facility for which there are no plans for future operation and that the information that might be presented during an informal public hearing could constitute a valuable resource for the NRC in reaching a decision with regard to the petition.

1,'' as an example of what could involve one or more significant safety issues. Bulletin 94–01 was sent to (1) all holders of operating licenses or construction permits for nuclear power reactors (for information) and (2) all holders (except Shoreham) of licenses for nuclear power reactors that are permanently shutdown with spent fuel in the spent fuel pool (for action). Petitioner argued that Bulletin 94–01 should have been sent to the Unit 1 licensee for action instead of merely for information because Unit 1 is more nearly like a permanently shutdown facility than an operating facility and the conditions described in the bulletin could have existed at Unit 1.

By letter dated August 7, 1998, Petitioner was informed that the NRC had reconsidered its earlier denial of the request for a hearing and had decided that holding an informal public hearing would be appropriate [4], even though such a hearing was not required under the criteria for such hearings as provided in NRC Management Directive 8.11, ''Review Process for 10 CFR 2.206 Petitions.'' The August 7 letter also addressed the issues surrounding Bulletin 94–01 and its applicability to Browns Ferry Unit 1. The hearing was held on October 26, 1998, in the Browns Ferry Nuclear Plant Training Center.[5]

II. Background

TVA is the holder of operating licenses for three nuclear power units at the Browns Ferry site. In March 1985, TVA voluntarily shut down Units 1 and 3 because of questions relating to primary containment isolation testing at Unit 1 and reactor water level instrumentation at Unit 3. Unit 2 was in a refueling outage, but TVA voluntarily decided not to restart the unit as scheduled because other questions and concerns arose about the adequacy of TVA's nuclear program. In September 1985,[6] the NRC requested TVA to submit its plans for correcting problems and improving performance in its overall nuclear program and at Browns Ferry. The Commission did not order TVA to obtain its approval before restarting the plants because of prior verbal agreement between TVA and NRC to that effect; however, TVA was required, pursuant to 10 CFR 50.54(f), to inform the NRC if TVA intended to change this commitment. In late 1985, TVA submitted its corporate nuclear performance plan (CNPP) to address weaknesses in the TVA corporate nuclear program. The CNPP was followed by the Browns Ferry Nuclear Performance Plan to address site-specific weaknesses and to resolve additional concerns raised by the NRC. These plans formed the regulatory framework for the restart of Unit 2.

In July 1987, the NRC concluded [7] that organizational, staffing, and programmatic improvements already in place or under way would resolve the problems at the corporate level. In January 1991, the NRC concluded [8] that TVA's commitments and corrective action programs for Unit 2 were acceptable, and in April 1991, the Commission approved Unit 2 restart. Unit 2 restarted May 24, 1991. TVA submitted its corrective action plan for returning Units 1 and 3 to service in 1991,[9] and generally used the same methods, criteria, and technical positions for Unit 3 that were approved for the restart of Unit 2. In February 1992, an NRC Restart Panel was formed in accordance with NRC IMC 0350. TVA completed the recovery of Browns Ferry Unit 3 in 1995, and the Commission authorized the Regional Administrator to approve restart of Unit 3 upon completion of certain open issues. The NRC Administrator for Region II issued restart approval on November 19, 1995. Units 2 and 3 have operated well since their respective restarts, and this performance is reflected in the NRC systematic assessment of licensee performance reports issued since the restart of Unit 2.

In April 1996, TVA requested removal [10] of Browns Ferry Unit 1 as a Category 3 plant from the NRC's list of problem plants. TVA stated that no decision had been reached on the long-term operational status of Unit 1, and the unit is defueled and maintained in lay-up status. Those shared systems that support operation of Units 2 and 3, however, will continue to be kept in service. TVA noted that there are no plans for equipment refurbishing or recovery activities at Unit 1. TVA committed to inform the NRC immediately of a decision to return Unit 1 to service, to implement the same programs used for the Unit 3 recovery, and to not restart Unit 1 without prior Commission approval. Unit 1 was removed from the list of problem plants [11] on June 21, 1996.

III. Discussion

The hearing provided Petitioner the opportunity to present information related to issues that have a bearing upon the actions requested in the petition. Petitioner, represented by Mr. David Lochbaum, was joined in presenting information to support the petition by Ms. Ann Harris, a representative of We the People of Tennessee and spokesperson for the National Nuclear Safety Network. The NRC staff has reviewed the transcript of the hearing to identify the relevant issues to be considered in addition to the filing of April 5, 1998. The following paragraphs discuss the issues raised in the petition and in the hearing. Related issues have been grouped together and are addressed in the following paragraphs.

Petitioner Issues

- The NRC does not inspect Browns Ferry Unit 1.
- The NRC cannot meaningfully inspect Browns Ferry Unit 1 because the NRC does not have an ''Administrative Hold'' category.
- The NRC cannot meaningfully inspect Browns Ferry Unit 1 because it is not in compliance with NRC regulations, including the ''Maintenance Rule.''

Petitioner asserts that, contrary to a statement made in a letter [12] to him by

[5] The hearing transcript can be obtained from the NRC World Wide Web page (http://www.nrc.gov/NRC/PUBLIC/2206trans.html). Copies of the transcript are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Athens Public Library, 504 E. South Street, Athens, Alabama 35611.

[6] NRC letter from William J. Dircks, Executive Director for Operations, to Charles Dean, Chairman,TVA Board of Directors, dated September 17, 1985.

[7] NUREG–1232, Volume 1, ''Safety Evaluation Report on Tennessee Valley Authority Revised Corporate Nuclear Performance Plan,'' July 1987.

[8] NUREG–1232, Volume 3, Supplement 2, ''Safety Evaluation Report on Tennessee Valley Authority: Browns Ferry Nuclear Performance Plan. Browns Ferry Unit 2 Restart,'' January 1991.

Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Athens Public Library, 504 E. South Street, Athens, Alabama 35611.

[6] NRC letter from William J. Dircks, Executive Director for Operations, to Charles Dean, Chairman,TVA Board of Directors, dated September 17, 1985.

[7] NUREG–1232, Volume 1, ''Safety Evaluation Report on Tennessee Valley Authority Revised Corporate Nuclear Performance Plan,'' July 1987.

[8] NUREG–1232, Volume 3, Supplement 2, ''Safety Evaluation Report on Tennessee Valley Authority: Browns Ferry Nuclear Performance Plan. Browns

[10] Letter from Oliver D. Kingsley, President and Chief Nuclear Officer, TVA, dated April 16, 1996, to James M. Taylor, NRC Executive Director for Operations.

[11] NRC letter from James A. Taylor, Executive Director for Operations, to Oliver D. Kingsley, President and Chief Nuclear Officer, TVA, dated June 21, 1996.

[12] NRC letter from Albert W. De Agazio, Browns Ferry Project Manager, to David A. Lochbaum, Union of Concerned Scientists, dated January 23,

the NRC Project Manager for Browns Ferry, he has information that shows that NRC inspectors do not look at Browns Ferry Unit 1 at all. Petitioner asserted further, that NRC inspectors could not meaningfully inspect Unit 1 because NRC regulations recognize only two categories of power plants: operating plants and permanently closed plants.

Browns Ferry Unit 1 is sometimes referred to as being in an ''Administrative Hold'' [13] status, but this is a TVA designation and it is irrelevant for regulatory purposes. Browns Ferry Unit 1 is an operating reactor subject to all the terms and conditions that are specified in Operating License DPR–33,[14] the uncertainty of its return to service notwithstanding. The Unit 1 Technical Specifications (TSs) are maintained, are in force, and must be complied with. The operating license and associated TSs are amended periodically, usually in concert with similar changes for Units 2 and 3.

Some Unit 1 systems or components [15] are required to support the unit in its current defueled condition, or they directly support the safe operation of Units 2 or 3. These systems and components are maintained and operated as required under applicable plant programs or TSs. The remaining systems and components [16] have been placed in lay-up status to protect their economic value and to preserve the equipment in the event a decision is made to restart the unit.

Unit 1 is subject to both routine and reactive NRC inspection, and the unit is inspected by NRC inspectors. However, the operational status of the facility is considered when determining the frequency, type, and scope of inspections, and the amount of inspection effort is substantially less than for a comparable facility in active service because much of the equipment and systems serve no safety function while the unit is shutdown and defueled. Thus, the NRC inspection effort for Unit 1 is focused mostly upon those areas that have a direct bearing upon safety. Generally, this includes those structures, systems, and components (SSCs) that are necessary to ensure the safe storage of Unit 1 irradiated fuel and to support the safe operation of Units 2 and 3. The inspection effort includes no or little effort for SSCs that are not needed to provide a safety function for the current plant operating status.

Petitioner, in the original petition and during the hearing, relied upon information compiled by the NRC that led him to conclude that Unit 1 is not inspected at all. The sources of the tables used by Petitioner, though not fully identified, appear to be taken from certain NRC documents that were intended primarily for internal management use, but the information has been released through at least one Freedom of Information Act request, and similar information has been presented at several of the annual Regulatory Information Conferences sponsored by NRR. We acknowledge that the NRC documents are misleading and could lead a person to that conclusion regarding Unit 1 inspection. Until 1997, NRR compiled quarterly various program and management information in a ''White Book,'' intended for internal purposes. The documents included data on inspection efforts expended at single-, dual-, and triple-unit sites. In those documents, Browns Ferry was shown as a dual unit site, though it is actually a triple unit site. Unit 1 was not included because it was not in operational service. This was done so that the data could be used for comparison purposes to other dual-unit sites. Although these documents [17] have described incorrectly the Browns Ferry site as a dual-unit site, the fact remains that Unit 1 is inspected by NRC inspectors. This inspection activity is adequately demonstrated by the results of a review of NRC inspection reports for Browns Ferry issued for the 3-year period 1996 through 1998. Of 32 inspection reports issued for that period, 10 refer to NRC inspection of Unit 1 issues (Table I). Table I does not include inspection activities associated with the systems ''shared'' between the units or inspection of common buildings; those items are routinely inspected as support for Units 2 and/or 3.

NRC IMC 0030, ''Policy and Guidance for Development of NRC Inspection Manual Programs,'' provides guidance for the development of the NRC inspection program, and the inspection program at Browns Ferry has been developed in accordance with this guidance. For the 12 month period from October 1, 1997, through September 30, 1998, the actual NRC inspection effort expended at Unit 1 was approximately 12 percent of the effort expended at either of the other units. On a site basis, Unit 1 received approximately 6 percent of the total inspection hours for the site. Thus, the greater inspection effort at the operating units allows the NRC to adequately assess the licensee's performance and to focus its efforts into areas that have the greater safety significance as opposed to inspecting in areas of Unit 1 that have little or no safety significance.

Petitioner asserts that Browns Ferry Unit 1 is not in compliance with NRC regulations. To support this contention, Petitioner states that usually TVA has deferred taking actions with respect to Browns Ferry Unit 1 requested by numerous generic communications issued since 1985. TVA typically has committed to completing the actions before returning the unit to service, if such a decision is made. As additional support for this contention, Petitioner notes that there is an outstanding issue regarding Unit 1 compliance with 10 CFR 50.65, commonly referred to as the maintenance rule.

IMC 0720 provides guidance with regard to NRC generic communications on nuclear reactor issues. Generic communications consist of bulletins, generic letters, and information notices. Bulletins may transmit information to the addressees, request specified actions, and require a written response. Generic letters request that analyses be performed or descriptions of proposed corrective actions be submitted regarding matters of safety, safeguards, or environmental significance. The addressees may be asked to accomplish the actions and report their completion by letter. Information relating to these actions may be requested on a voluntary basis or in accordance with Section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). Usually, this type of generic letter requests new or revised licensee commitments or other continuing actions but may not explicitly or coercively solicit licensee commitments. Information notices provide information regarding safety, safeguards, or environmental issues. Information notices normally are used to bring significant, recently identified safety, security, or environmental information to the attention of licensees. Addressees are expected to review the

1998. This letter also was an attachment to the April 5, 1998, submitted by Mr. Lochbaum.

[13] ''Administrative Hold'' is a TVA designation that denotes that while no decision has been made regarding future operation of the facility, the option for restart at an unspecified future date is being retained.

[14] Operating License No. DPR–33 was issued to TVA for the operation of Browns Ferry Unit 1 on December 20, 1973. The license expires on midnight October 20, 2013.

[15] This includes such systems (or portions thereof) as spent fuel pool cooling and cleanup, raw water, fire protection, reactor /refuel zone ventilation, radiation monitoring, residual heat removal, reactor building closed cooling water, certain electrical systems, and emergency diesel generators.

[16] Many of these systems and components have been drained, deenergized, and disassembled, as appropriate.

[17] Publication of these documents was discontinued at the end of 1996.

information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems.

IMC 0720 states that the various types of generic communications are not used to impose regulatory requirements, and they are not to be used as a substitute for the rule-making process. Thus, the fact that a licensee merely provides the written response required by the Atomic Energy Act and/or NRC rules and regulations but does not, or will not, implement other requested action(s) does not, by itself, constitute being in non-compliance with a regulatory requirement and does not constitute a basis for suspension or revocation of the operating license. In such circumstances, the NRC, may take other action commensurate with the safety significance of the issues. Such actions could vary in severity from acceptance by the NRC that the licensee has a valid basis for not taking the requested actions up to the NRC's issuing an Order to shut down (or to remain shutdown) until the particular safety issue is resolved in an acceptable manner. With regard to Browns Ferry Unit 1, the licensee has either taken the requested actions in the generic communications when necessary or has committed to address the issues raised before the unit can be restarted. Furthermore, although TVA has no announced plans for restarting the facility, TVA has agreed not to restart it without specific approval from the Commission. Thus, any Commission action taken with regard to revoking the Unit 1 operating license merely because of TVA's deferral of actions requested in generic communications pending a decision to restart Unit 1 would serve no useful purpose.

With the possible exception of 10 CFR 50.65, the Commission is not aware of any non-compliance issues with applicable NRC rules and regulations at Browns Ferry Unit 1. Furthermore, Petitioner has not offered any contradictory credible information, either in the original petition or during the hearing. However, the issue of Unit 1 compliance with 10 CFR 50.65 is still undergoing review by the NRC staff, and no final decision has been made.

The issue regarding 10 CFR 50.65 arose from an inspection of the implementation of 10 CFR 50.65 at the Browns Ferry plant from April 4 through April 8, 1997.[18] The inspection team found that the licensee considered Unit 1 status (shutdown and defueled) for implementing 10 CFR 50.65. Thus, a number of Unit 1 systems, such as high pressure coolant injection, which normally would be included within the scope of 10 CFR 50.65 for an operating plant, were not included, and performance monitoring, data collection, and trending were not being performed on these systems. However, those Unit 1 systems that support Unit 2 and/or Unit 3 operation, systems that are common to Unit 2 or Unit 3, or systems required to maintain safe shutdown of Unit 1, such as spent fuel pool cooling, were properly scoped under 10 CFR 50.65, and performance monitoring, data collection, and trending were being performed on these systems.

At issue is whether scoping Unit 1 SSCs by considering the defueled and indefinite shutdown condition of Unit 1 satisfies 10 CFR 50.65. The staff has informed the licensee that the issue can be resolved by one of three approaches, namely, certify per 10 CFR 50.82(a)(1) that Unit 1 operations have ceased permanently, submit a request for exemption from those aspects of 10 CFR 50.65 that currently are not being met, or revise the scope of the Unit 1 maintenance program to meet the requirements of the rule. On February 4, 1999, TVA submitted a request for a temporary partial exemption from the requirements of 10 CFR 50.65. The staff currently is reviewing the proposed exemption request.

Petitioner Issues

- TVA would exceed its statutory debt limit if Browns Ferry Unit 1 is closed prematurely.
- TVA may lack the money needed to put Browns Ferry Unit 1 into the operating category, or the permanently closed category.
- TVA does not have the necessary funds for decommissioning funding assurance.

Petitioner has made a number of assertions regarding the ability of TVA to fund operations and/or decommissioning of Unit 1 but has not provided any facts in support thereof. The NRC, however, has no regulatory authority with regard to issues related to TVA's statutory debt limit or other financial matters and decisions other than decommissioning funding assurance.

On November 23, 1998, the Commission's amended rules for ''Financial Assurance Requirements for Decommissioning Nuclear Power Reactors'' became effective.[19] The amendments require power reactor licensees to report periodically on the status of their decommissioning funds, and on changes in their external trust agreements and other financial assurance mechanisms, and also allow licensees to take credit for certain earnings on decommissioning trust funds. The amendments also added a definition of the term ''Federal Licensee'' to address the issue of which licensees may use statements of intent. As now defined in 10 CFR 50.2, a Federal Licensee means any NRC licensee, the obligations of which are guaranteed by and supported by the full faith and credit of the United States Government. In the past, TVA has relied upon statements of intent to have decommissioning funds available. The purpose of the statement of intent is to obtain a commitment by another, and superior, governmental entity that the obligations of the subordinate governmental entity will be paid by the superior entity if the subordinate entity cannot pay them. Such a commitment represents support for the obligations by the full faith and credit of the United States. TVA agrees[20] that the revised definition excludes TVA from relying upon this funding mechanism and has informed the NRC that statements of intent will no longer be relied upon for decommissioning funding assurance. TVA has provided documentation for three external Master Decommissioning Trusts that were established in 1996. TVA has stated that the external trusts arrangements meet the requirements for an external sinking fund (10 CFR 50.75(e)(ii)). The trust arrangements meet the requirement that the account be segregated from licensee assets and placed outside the licensee's administrative control. During the hearing on October 26, 1998, a representative of the TVA's Office of the General Counsel stated that the external trust fund arrangements exceeded several hundreds of millions of dollars. As required by 10 CFR 50.75(f)(1), TVA is to report to the NRC by March 31, 1999, and at least once every 2 years thereafter, the status of its decommissioning funding, including the amount of decommissioning funds estimated to be required, the amount accumulated to the end of the calendar year preceding the date of the report, and a schedule of the annual amounts remaining to be collected. The NRC will review the status of TVA's decommissioning funding report, and if necessary, appropriate action will be

[18] NRC Inspection Report 50–259/97–04, 50–260/97–04, and 50–296/97–04, issued May 21, 1997.

[19] Final rule changes to 10 CFR Parts 30 and 50 on financial assurance requirements for the decommissioning of nuclear power plants were published in the **Federal Register** on September 22, 1998 (63 FR 50465).

[20] Letter from Mark J. Burzynski, Manager, Nuclear Licensing, TVA, dated December 21, 1998, to NRC.

taken to ensure compliance with NRC regulations.

Petitioner Issue

• A decommissioning plan would ensure safe storage of Browns Ferry Unit 1 irradiated fuel and would ensure sufficient independence of Units 2 and 3 from Unit 1.

Petitioner contends that Unit 1 irradiated fuel stored in its spent fuel pool will continue to represent a threat to public health for many years. The probability of an accident involving stored fuel is considered to be sufficiently small to make the overall risk to the public from an accident acceptable; however, Petitioner contends that the probability is small only because NRC regulations for design features and administrative controls at both permanently closed plants and operating plants minimize the chances of an accident. Petitioner asserts that there are no regulations for plants in Administrative Hold status, and, thus, there are no regulations that apply to Unit 1.

As previously stated, Administrative Hold is a TVA designation, not an NRC designation, and, thus, for NRC regulatory purposes, Browns Ferry Unit 1 is an operating reactor and is subject to all terms and conditions of the Unit 1 operating license, TSs, and all applicable NRC regulations, contrary to Petitioner's assertion that Unit 1 is unregulated.

Each of the reactors at Browns Ferry has its own spent fuel storage pool, but the pools of Units 1 and 2 are joined by a transfer canal that allows fuel assemblies to be transferred between the Unit 1 and Unit 2 fuel storage pools. The fuel storage facilities are shared only for Units 1 and 2, and the transfer canal is the only shared feature. The Unit 1 spent fuel storage pool is located on a common refueling floor with and in the same structure that houses the Units 2 and 3 spent fuel storage pools.

Units 2 and 3 are in active operational status, thus, each unit is refueled periodically, requiring discharge of recently irradiated fuel into the storage pools. Compared to Unit 1 fuel that was last discharged in 1985, recently discharged fuel from Unit 2 or Unit 3 is substantially more radioactive and produces greater decay heat. Thus, the consequences of an accident involving recently discharged irradiated fuel would be more severe than the same accident involving Unit 1 fuel. It follows that TSs, administrative controls, technical requirements, and design features that are adequate to ensure the safe storage of Unit 2 or Unit 3 spent fuel are also adequate to ensure safe storage of Unit 1 irradiated fuel.

Thus, whether or not Unit 1 was to be declared permanently shut down, the fuel storage requirements would not be changed. Requiring the licensee to declare the permanent shutdown of Unit 1 and to submit a post-shutdown decommissioning activities report, as requested by Petitioner, would have no effect upon the risk to the public from a potential fuel-handling accident or from accidental draining of the fuel storage pool because the existing technical specifications and administrative controls would not be changed, and existing design features to preclude draining of the storage pools would be maintained. Additionally, the SSCs required to ensure safe storage of irradiated fuel in the Unit 1 storage pool are operated, tested, and maintained to ensure that they are capable of performing their function.

With regard to Petitioner's assertion that a decommissioning plan would ensure sufficient independence of Units 2 and 3 from Unit 1, it is not at all clear which safety issue would be addressed. As currently licensed, the Browns Ferry units incorporate some sharing of certain structures and systems to obtain redundancy and improve reliability, but aside from the shared and common features, each unit is capable of operating independently of the other units, and each unit's TSs and technical requirements take into account the shared and common features that must be operable to support safe operation of that unit. Requiring the licensee to declare the permanent shutdown of Unit 1 and to submit a post-shutdown decommissioning activities report would require retaining those sections of the Unit 1 TSs that are necessary to support the safe operation of Units 2 and 3.

Continuing Operational Safety of Browns Ferry Unit 1

The Browns Ferry Unit 1 TSs are maintained and amended periodically as necessary, as is the case with Units 2 and 3, and TVA is required to operate Unit 1 in conformance with the TSs and technical requirements. Inasmuch as Unit 1 is shutdown and defueled, a number of safety and non-safety systems and components are not required to be operational. These systems and components have been drained, deenergized, and disassembled, as appropriate, and have been placed in a lay-up condition to protect and preserve the equipment pending a decision to resume power operations. The lay-up program is described in plant procedures and includes periodic monitoring of the condition of the equipment and lay-up status.

Unit 1 systems and components required to perform a function while the unit is in its current defueled status or that are required to support Units 2 and 3 operations are operated, maintained, and periodically tested in conformance with applicable TSs, and are included within the scope of the maintenance rule (10 CFR 50.65) program. Design and configuration control is maintained for these systems, and modifications or temporary alterations are performed under the provisions of 10 CFR 50.59.

Certain systems and components not required to perform a function while Unit 1 is shutdown and defueled may not now conform to the design basis or may not have been modified to meet the actions requested by various NRC generic communications issued since the unit shut down. This, by itself, does not constitute a basis for revoking the license since the facility is in an operational mode in which the equipment is not required to be operable. TVA has committed to implementing a Design Baseline Verification Program for Unit 1 prior to returning Unit 1 to service.

Units 1 and 2 share a common control room that is staffed continually by licensed reactor operators, and the Unit 1 control boards are given regular attention similar to the operating units. Operators and engineers routinely tour areas of Unit 1 containing the systems and equipment that the TSs require to be operable to ensure safe storage of irradiated fuel and to support operation of the other units.

Relicensing Versus Applying the IMC 0350 Process

Petitioner asserts that revoking the operating license and requiring relicensing if TVA later decides to restart Unit 1 is a better and safer process than is the current restart process in IMC 0350. Petitioner believes that this would ''wipe the licensing slate clean and allow TVA, the NRC, and the public to examine restarting the plant without the burden of unraveling the mess caused by more than a decade of licensing limbo.''

NRC IMC 0350 provides staff guidelines for approving restart of nuclear power plants that have been shut down either voluntarily or involuntarily because of a significant operating event, complex equipment problems, or serious licensee management deficiencies. The guidelines have been used successfully for the restart of Browns Ferry Unit 3, Crystal River Unit 3, and Millstone Unit 3 and are being used for the D. C. Cook

reactors and Millstone Unit 2. In each case, a plant-specific restart plan is developed using the IMC for guidance. The restart action plan identifies expected NRC actions to be taken before approving restart and includes an inspection plan to ensure that an adequate inspection record is created to support the restart decision. IMC 0350 specifies that the NRC Commissioners are to be adequately informed of staff restart actions on a continuing basis through Commission papers or through the Executive Director for Operations, and as necessary, the staff will brief the Commissioners. IMC 0350 provides the opportunity for public participation through public meetings. Through such meetings, the public may hear and comment on the licensee's restart plans and the results of NRC reviews of the restart activities. Public comments and concerns are considered by the NRC and may be factored into the restart review, as appropriate.

During the hearing on October 26, 1998, Petitioner was questioned by an NRC representative regarding why it is believed that the processes used by TVA and NRC to recover Units 2 and 3 would not work for recovery of Unit 1. Petitioner indicated that the process is ''not very objective and it's basically up to the whims of the restart team as to what is safe, where the lines are drawn.'' However, when asked if there would be an issue if the process is applied correctly with openness and public involvement, Petitioner responded by referencing the use of the process at Millstone and indicating that it [IMC 0350] is a good process, but that it wasn't followed [at Millstone]. Thus, Petitioner's issue does not appear to be the process but its implementation. Petitioner conceded that the IMC 0350 process is working very well in the case of the D.C. Cook plant, and that if it were used at Browns Ferry Unit 1 as it is being used at D. C. Cook, there would be reasonable expectation that a good product would be realized.

IV. Summary and Conclusions

The NRC has determined that—

- Petitioner has not identified any credible safety concern that has been created by the current ''Administrative Hold'' status of the unit that would not otherwise exist if the operating license were to be revoked. Absent a credible safety concern, there is no regulatory basis for suspending or revoking an operating license merely because the licensee chooses not to operate the unit.
- The licensee is required to comply with and is, with one possible exception to the staff's knowledge, in compliance with all current applicable regulations for operating reactors and is required to comply with Unit 1 TSs and other technical requirements for the current operational mode of the unit. The issue of compliance of Unit 1 with 10 CFR 50.65 is the subject of an ongoing review, and resolution is expected soon.
- Unit 1 is inspected by NRC inspectors, but at a reduced scope that is appropriate for the status of the unit.
- Decommissioning Unit 1 would not provide any greater degree of safety for the Unit 1 irradiated fuel, for radiation control, or for Units 2 and 3 than is currently provided by the requirements of the operating license, TSs, and the Technical Requirements Manual.
- There is no demonstrated credible basis for the assertion that facility restart based upon IMC 0350 is a less reliable process for resolving the safety concerns of a problem plant than the relicensing process. The IMC 0350 process has been demonstrated by a number of restart efforts, including those for Browns Ferry Unit 3.

For the reasons stated herein Petitioner's requests for the NRC to revoke the Browns Ferry Unit 1 operating license and to require TVA to submit a decommissioning plan or a lay-up plan for Unit 1, and for the NRC to conduct inspections against the decommissioning plan are denied.

As provided for in 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. This decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision at that time.

Dated at Rockville, Maryland, this 29th day of March 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Attachment to Director's Decision 99–06

TABLE 1.—BROWNS FERRY UNIT 1 INSPECTION ACTIVITIES

[1996 through 1998]

Inspection report	Date	Inspection activity
50–259/96–01	02/29/96	Radioactive material postings.
50–259/96–03	04/15/96	Connection of Unit 1 and Unit 2 spent fuel pool volumes, spent fuel pool design-basis and operating information.
50–259/96–05	06/18/96	Udated final safety analysis report description of spent fuel pool systems.
50–259/96–06	08/15/96	Continuous air monitoring systems.
50–259/96–10	11/07/96	Housekeeping issues.
50–259/96–12	12/20/96	Lay-up and preventive maintenance program implementation.
50–259/97–03	04/22/97	Spent fuel pool cooling system walkdown, identification that Unit 1 pool makeup valve operator had been removed.
50–259/97–04	05/21/97	Maintenance rule implementation.
50–259/97–08	08/29/97	Sampling of a raw cooling water discharge.
50–259/97–12	02/12/98	Repairs to a radiation monitoring system valve.

[FR Doc. 99–8164 Filed 4–1–99; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of March 1, 1999, of three rescission proposals that have been pending for less than 45 days and three deferrals contained in two special messages for FY 1999. These messages were transmitted to Congress on October 22, 1998, and February 1, 1999.

Rescissions (Attachments A and C)

As of March 1, 1999, three rescission proposals totaling $35 million have been transmitted to the Congress. Attachment C shows the status of the FY 1999 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 1999, $1.5 billion in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 63949, Tuesday, November 17, 1998
64 FR 6721, Wednesday, February 10, 1999

Jacob J. Lew,

Director.

BILLING CODE 3110–01P

ATTACHMENT A

STATUS OF FY 1999 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President	35.0
Rejected by the Congress	---
Currently before the Congress	35.0

ATTACHMENT B

STATUS OF FY 1999 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President	1,680.7
Routine Executive releases through March 1999. (OMB/Agency releases of $222.1 million)	-222.1
Overturned by the Congress	---
Currently before the Congress	1,458.6

ATTACHMENT C
Status of FY 1999 Rescission Proposals - As of March 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress		Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
		Less than 45 days	More than 45 days					
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of Lands and Resources	R99-1	6,800		2-1-99	*			
EXECUTIVE OFFICE OF THE PRESIDENT								
Unanticipated Needs								
Unanticipated Needs for Natural Disasters	R99-2	10,000		2-1-99	*			
INTERNATIONAL ASSISTANCE PROGRAMS								
International Security Assistance								
Foreign Military Financing Loan Program Account	R99-3	18,240		2-1-99	*			
TOTAL, RESCISSIONS		**35,040**						

* No funds are being withheld.

[FR Doc. 99–8089 Filed 4–1–99; 8:45 am]
BILLING CODE 3110–01–C

ATTACHMENT D
Status of FY 1999 Deferrals - As of March 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-99
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D99-1	82,858	17,724	10-22-98	32,724				67,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund	D99-2	84,777		10-22-98					
			1,310,376	2-1-99	71,377				1,323,776
Agency for International Development									
International Disaster Assistance	D99-3	185,000		2-1-99	118,000				67,000
TOTAL, DEFERRALS		**352,635**	**1,328,100**		**222,101**				**1,458,634**

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 5, 1999.

A closed meeting will be held on Tuesday, April 6, 1999, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 6, 1999, at 10:00 a.m., will be:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 30, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–8237 Filed 3–31–99; 12:33 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41214; File No. SR–CBOE–99–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to the Definition of Expiration Month for Purposes of Determining Log-On Obligations for the Retail Automatic Execution System

March 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change. The Exchange filed an amendment to its proposal on February 23, 1999.[3] The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify the definition of an expiration month for purposes of determining compliance with the Retail Automatic Execution System (''RAES'') log-on requirement for market-makers of options on the Standard & Poor's 100 Index (''OEX'') and the Dow Jones Industrial Average (''DJX''), as detailed in Exchange Rule 24.17. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated February 22, 1999 (''Amendment No. 1''). Amendment No. 1 redesignated the proposal pursuant to Section 19(b)(2) and requested accelerated approval of the proposed rule change. In addition, the amendment added language to CBOE Rule 24.17 defining expiration month for options on both the Standard & Poor's 100 Index and the Dow Jones Industrial Average.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the definition of an expiration month for purposes of determining compliance with the RAES log-on requirement for market-makers of OEX and DJX options, as detailed in Exchange Rule 24.17. Pursuant to Exchange Rule 24.17(b)(iii), once a market-maker has logged on to RAES at any time during an expiration month, he or she must continue to do so each time he or she is present in the trading crowd until the next expiration. For this purpose, the Exchange is codifying the definition of an expiration month for OEX options as the period from the Monday immediately following an expiration Saturday through the Friday immediately preceding the next successive expiration Saturday.[4]

When DJX RAES obligations were first established in October 1997, the Exchange applied the same RAES log-on obligations as those for OEX options.[5] In consideration of the fact that expiring DJX options contracts cease trading at the close of business on the Thursday immediately preceding an expiration and that the new near-term series become the RAES eligible series on that Friday, however, the Exchange has determined that applying the same definition of an expiration month for options on both OEX and DJX is unworkable. Accordingly, the Exchange is codifying the definition of an expiration month for DJX RAES log-on obligation purposes as the period from the Friday immediately preceding an expiration Saturday through the

[4] *See* Amendment No. 1.

[5] *See* Securities Exchange Act Release No. 39202 (October 3, 1997) 62 FR 53358 (October 14, 1997).

Thursday immediately preceding the next successive expiration Saturday.

2. Statutory Basis

The Exchange believes the proposed rule change is consisting with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should be refer to File No. SR–CBOE–99–02 and should be submitted by April 23, 1999.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[8] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest.[10]

RAES log-on obligations attempt to ensure continued adequate RAES participation by market-makers in every type of market situation, without the Exchange having to assign an inordinate number of RAES trades to any particular market-maker.[11] The Commission notes that market-makers who violate the RAES log-on obligations are subject to disciplinary action by the Exchange, including fines and suspension from participation in RAES.[12] Accordingly, the Commission believes it is appropriate for the Exchange to provide a precise and appropriate definition of an expiration month for both OEX and DJX options. Based on the differing expiration date for OEX and DJX options, the Commission believes it is reasonable to use different definitions for expiration month as it relates to RAES obligations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** As CBOE notes, the definition of an expiration month is used solely as an internal rule within the Exchange to determine whether members are meeting their RAES log-on requirements.[13] Accelerated approval of the proposal will help facilitate the market-makers' compliance with their RAES log-on obligations and the Exchange's regulatory overview of its members without delay. The Commission approved a similar rule change by CBOE regarding options on Standard & Poor's 500 Stock Index.[14] Accordingly, the Commission does not believe that the current filing raises any novel regulatory issues. For the foregoing reasons, the Commission believes it is consistent with Section 6(b)(5)[15] and Section 19(b)(2)[16] of the Act to grant accelerated approval to the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–99–02) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8145 Filed 4–1–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 37313 (June 14, 1996) 61 FR 32470 (June 21, 1996).

[12] *See* Securities Exchange Act Release No. 37464 (June 22, 1996) 61 FR 39175 (July 26, 1996); Exchange Rules 24.17(f) and (g).

[13] *See* Amendment No. 1.

[14] *See* Securities Exchange Act Release No. 37349 (June 21, 1996) 61 FR 33787 (June 28, 1996).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41219; File No. SR–NSCC–98–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change to Modify Rules Regarding Mutual Fund Services Transfer Service

March 26, 1999.

On July 30, 1998, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–98–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on October 21, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change modifies NSCC's rules relating to its Mutual Fund

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40549 (October 14, 1998), 63 FR 56280.

Services transfer service.[3] The Mutual Fund Services transfer service enables fund members and mutual fund processors to transfer between each other the value of Fund/SERV eligible mutual fund shares or UIT units on an automated basis.

Currently, a delivering fund member that has acknowledged a transfer request must confirm the value of the Fund/SERV eligible mutual fund shares or UIT units to be transferred by submitting a confirmation to NSCC no earlier than two days and no later than sixty business days after the submission of an acknowledgment. The rule change will permit the delivering fund member to submit a confirmation no earlier than one day and, as is the case today, no later than sixty business days after the submission of an acknowledgment. NSCC will notify members by Important Notice of the specific implementation.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(F) because the rule change facilitates faster transfers.

Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–98–11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8126 Filed 4–1–99; 8:45 am]

BILLING CODE 8010–01–M

[3] Specifically, NSCC is amending Rule 52, A. Fund/Serv, SEC 21. Transfers of Fund/Serv Eligible Mutual Fund Shares and UIT Units.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41216; File No. SR–Phlx–98–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Increase in Position and Exercise Limits for Certain Broad-Based Index Options

March 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1001A(a)(i)-(ii) by increasing broad-based (''market'') index option position limits on the Value Line Composite Index (''VLE''), the US Top 100 Index (''TPX''), and the National Over-the-Counter Index (''XOC'').[3] Specifically, the current levels of 25,000 contracts total and 15,000 contracts in the nearest expiration month for the VLE and the TPX, and 25,000 contracts for the XOC, are proposed to be tripled to 75,000 contracts total and 45,000 contracts in the nearest expiration month for VLE and TPX, and 75,000 contracts for XOC.

Exchange exercise limits,[4] which are expressed in Phlx Rule 1002A, are established by reference to position limits, such that any increase in position limits would also increase exercise limits. Accordingly, the Phlx is proposing to increase its exercise limits to correspond to the proposed increases in position limits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase position and exercise limits for the market index options currently traded on the Exchange in order to attract additional trading interest and, thus, promote depth and liquidity in Phlx market index options. The Exchange believes that the current limits constrain certain investors from trading index options. Pursuant to Rules 1001A and 1002A, the position and exercise limits for the VLE and TPX are 25,000 contracts with no more than 15,000 contracts expiring in the nearest expiration month. The position and exercise limits for the XOC is 25,000 contracts with no additional restrictions for the nearest expiration month. For the reasons given below, the Exchange proposes tripling the limits or the VLE and TPX to 75,000 contracts overall with no more than 45,000 contracts expiring in the nearest expiration month. Further, the Exchange proposed to triple the limits for XOC to three times the current level, or 75,000 contracts.

The Exchange believes that the proposed increase is appropriate at this time, in light of the Exchange's nearly 13 years experience trading market index options. In 1985, the National Over-the-Counter Index, XOC, was the first market index option to be traded on the Phlx.[5] Since that time, the Exchange has listed additional market index options. Additionally, the market for index options has also evolved, as more investors are familiar with the product and it uses. Currently, the Phlx lists

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[4] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[5] Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985) (order approving File No. SR–Phlx–84–28).

options on the following three market indexes, noting the current position limits.[6]

(1) US Top 100 Index (''TPX'') 25,000 contracts (no more than 15,000 contracts can be in the nearest expiration month);

(2) Value Line Composite Index (''VLE'') 25,000 contracts (no more than 15,000 contracts can be in the nearest expiration month); and

(3) National Over-the-Counter Index (''XOC'') 25,000 contracts.

The Exchange recognizes that the purposes of these limits are to prevent manipulation and to protect against disruption of the markets for both the option as well as the underlying securities. The Exchange has considered the effects of increased position limits on the marketplace, and believes that manipulation and disruption concerns are addressed by a tripled position limits and are offset by the market need for the increased limits. Specifically, the Phlx continues to monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits; the new limits will not diminish the surveillance function in this regard.

The current levels have been in place since October 1996,[7] such that a review of the current position limits is appropriate. Position and exercise limits for the National Over-the-Counter Index were raised from 17,000 to 25,000 contracts or 47% in 1996. Position and exercise limits for the Value Line Composite Index were raised from approximately 13,000 contracts, based on a position limit based on monetary value, to 25,000 contracts or 92% in 1988. The US Top 100 Index were created with limits of 25,000 contracts in 1995.

In prior releases approving increased position limits, the Commission acknowledged that a gradual, evolutionary approach has been adopted by the Commission and the various options exchanges in increasing position and exercise limits. In light of the nearly two years since limits were changed, the Exchange believes that these increases are reasonable. Recently, the options exchanges have filed similar proposals respecting equity options.[8]

The Phlx also believes that higher position limits would further accommodate the hedging needs of Exchange market makers and specialists, who are also restricted by current levels. The Exchange continues to believe that increases are needed for traders and investors. The Exchange has been requested by its members and customers, who have repeatedly expressed that these limits hamper the ability to execute investment strategies, to again propose an increase in position limits. Such requests emphasize that institutional hedging needs and trading objectives may exceed current limits, in view of the large portfolios common to institutional trading and that certain sized transactions are required to execute complicated, cross-market strategies. Phlx also notes that floor members have expressed the resulting deleterious effect on index options trading in an exchange environment. Based on such member and customer requests, the Exchange believes that the current position limit levels continue to discourage market participation by large investors and the institutions that compete to facilitate the trading interests of large investors. Accordingly, this proposal aims to also accommodate the liquidity and hedging needs of large investors and the facilitators of those investors.

Concurrent with the proposed increase to position limits, the Exchange is also proposing a corresponding increase to market index option exercise limits. The Exchange believes that this increase is necessary and appropriate for the same reasons as the rationale cited herein for the proposed position limit increases. Furthermore, the Exchange believes that exercise limits constrict trading strategies by preventing investors from exercising positions larger than the limit within five consecutive business days. The Exchange also notes that all of the market index options currently trade on the Exchange are European style, exercisable only during a specified period at expiration, such that the manipulation and market disruption concerns associated with large exercises will be limited. Finally, since index options are settled in cash, not in securities, the Phlx believes the underlying securities would experience very little price movement or increased volume, if any, due to the exercise of the index options.[9]

2. Basis

The Exchange believes that the proposal to increase market index option position limits is consistent with Section 6 of the Act in general,[10] and in particular, with Section 6(b)(5), in that it is design to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. The Exchange believes that the proposal should remove impediments to and perfect the mechanism of a free and open market by providing market opportunity to investors constricted by current position limit levels.

The Phlx also believes that by stimulating market participation and thereby increasing option market depth and liquidity, the proposed rule change should promote just and equitable principles of trade. At the same time, the Phlx believes that the proposed position limits should continue to prevent fraudulent and manipulative acts and practices as well as protect investors and the public interest by limiting the ability to disrupt and manipulate the markets for options as well as the underlying securities. The Exchange believes that the proposal represents a balance between creating a disincentive to manipulate or disrupt the marketplace consistent with the purposes of such limits, and setting such limits so low so as to discourage market participation or liquidity providing activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[6] Please note that the Big Cap Index is being removed from the text of both Rule 1001A as well as 1101A, in order to correct both rules to reflect its delisting.

[7] *See* Exchange Act Release No. 36745 (January 19, 1996), 61 FR 2561 (January 26, 1996) (SR–Phlx–95–38) (establishing XOC position and exercise limits); Exchange Act Release No. 35591 (April 11, 1995), 60 FR 19423 (April 18, 1995) (SR–Phlx–95–07) (establishing TPX position and exercise limits); Exchange Act Release No. 25644 (May 3, 1988) 53 FR 16829 (May 11, 1988) (SR–Phlx–88–06) (establishing VLE position and exercise limits).

[8] *See* Exchange Act Release No. 40172 (July 6, 1998), 63 FR 37913 (July 14, 1998) (SR–PCX–98–33); Exchange Act Release No. 40160 (July 1, 1998), 63 FR 37155 (July 9, 1998) (SR–CBOE–98–25); and Exchange Act Release No. 40159 (July 1, 1998), 63 FR 37151 (July 9, 1998) (SR–Amex–98–22). The Commission notes that these proposed rule changes were approved in January 1999. *See* Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (order approving PCX–98–33, CBOE–98–25 and Amex–98–22).

[9] The Commission notes that, depending on the trading strategy used by an investor in trading index options, the underlying securities could experience significant price movement and increased volume regardless of the fact that such index options are cash-settled.

[10] 15 U.S.C. 78f(b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Phlx–98–55 and should be submitted by April 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8146 Filed 4–1–99; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Business Loan Programs; Notice of Initial Benchmark Number

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: SBA regulations governing the securitization of Section 7(a) loans require that from time to time the SBA publish in the **Federal Register** the ''Benchmark Number'' to be used in overseeing securitizing lenders. The Benchmark Number is the number of percentage points that a securitizing lender's Currency Rate may decline before SBA takes action. The purpose of this Notice is to establish an initial Benchmark Number of 2.5 percentage points.

SUPPLEMENTARY INFORMATION: In February of 1999, SBA published its final rule governing the securitization of the unguaranteed portions of 7(a) loans in the **Federal Register**. Section 120.420 of the rule requires the SBA to publish the ''Benchmark Number'' for securitizations in the **Federal Register** from time to time. The Benchmark Number will be used in the oversight of securitizing lenders. The Benchmark Number is the number of percentage points that a securitizing lender's Currency Rate may decline before SBA takes action.

The 2.5 percentage point Benchmark was proposed in comments to the May 1998 proposed securitization rule (63 FR 27221). SBA considers a 2.5 percentage point decline in Currency Rate a significant event warranting action. SBA will monitor the Benchmark Number and, if economic conditions or policy considerations warrant, SBA may modify it to protect the safety and soundness of the 7(a) program. SBA will publish any modifications to the Benchmark Number in the **Federal Register** at least 30 days before the effective date.

DATES: Effective April 2, 1999.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Secondary Market Sales, 202–205–7505, U.S. Small Business Administration, 409 Third Street, S.W., Suite 8200, Washington, D.C. 20416.

Aida Alvarez,

Administrator.

[FR Doc. 99–8147 Filed 4–1–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3164]

State of Tennessee

Loudon County and the contiguous counties of Anderson, Blount, Knox, McMinn, Monroe, and Roane in the State of Tennessee constitute a disaster area as a result of damages caused by a fire that occurred on March 6, 1999 in Lenoir City. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on May 21, 1999 and for economic injury until the close of business on December 22, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.188
Business with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 316405 and for economic injury the number is 9B4600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 22, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–8149 Filed 4–1–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9B45]

State of Washington

Ferry and Okanogan Counties and the contiguous counties of Chelan, Douglas, Grant, Lincoln, Skagit, Stevens, and Whatcom constitute an economic injury disaster area as a result of flooding that occurred in May of 1998. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on *December 23, 1999* at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 23, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–8150 Filed 4–1–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–560 (Sub-No. 1X)]

Aberdeen & Rockfish Railroad Company d/b/a Dunn-Erwin Railway—Abandonment and Discontinuance Exemption—In Harnett County, NC

On March 15, 1999, Aberdeen & Rockfish Railroad Company d/b/a Dunn-Erwin Railway (DER) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad that it owns and discontinue service over a line of railroad that it leases from CSX Transportation, Inc., in Harnett County, NC. The line to be abandoned is approximately 5.488 miles long [1] and extends from milepost SDS 53.00 near Erwin to milepost SDS 56.66 at Dunn, and from milepost SDE 0.00 near Erwin to milepost SDE 2.02 at Erwin. The line over which DER's operations are to be discontinued is approximately 3,093 feet long and consists of approximately 1,700 feet of track between milepost SDS 56.66 and milepost SDS 57.01, and includes two adjoining spur tracks, D&S No. 3 and No. 11, which are 600 and 793 feet, respectively. The lines traverse U.S. Postal Service Zip Codes 28334, 28335 and 28339, and include the stations of Dunn and Erwin, located at the two end points of DER's line.

The lines do not contain federally granted rights-of-way. Any documentation in DER's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 2, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of DER's line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 22, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–560 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Ave., N.W., Washington, DC 20005–4797. Replies to the DER petition are due on or before April 22, 1999.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: March 25, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–8066 Filed 4–1–99; 8:45 am]

BILLING CODE 4915–00–P

[1] DER avers that the mileposts are not accurately placed. Accordingly, it states that the line is actually 5.488 miles in length not 5.68 miles as interpolated from the milepost designations.

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

March 26, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 3, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0146.

Form Number: IRS Form 2553.

Type of Review: Extension.

Title: Election by a Small Business Corporation.

Description: Form 2553 is filed by a qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hr., 37 min.

Learning about the law or the form—3 hr., 11 min.

Preparing, copying, assembling and sending the form to the IRS—3 hr., 28 min.

Frequency of Response: Other (once).

Estimated Total Reporting/Recordkeeping Burden: 7,625,000 hours.

OMB Number: 1545–1375.

Regulation Project Number: IA–5–92 Final.

Type of Review: Extension.

Title: Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals.

Description: These regulations provide for a joint election to have the regulations apply to certain bankruptcy cases. In a chapter 7 case, the written consent of the trustee must be obtained.

In chapter 11 cases, the election must be in the reorganization plan or in a court order.

Respondents: Individuals or households.

Estimated Number of Respondents: 600,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 600,000 hours.

OMB Number: 1545–1394.

Form Number: IRS Form 1120–SF.

Type of Review: Extension.

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

Description: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—18 hr., 25 min.

Learning about the law or the form—2 hr., 43 min.

Preparing the form—5 hr., 0 min.

Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 26,670 hours.

OMB Number: 1545–1420.

Form Number: IRS Form 8849.

Type of Review: Extension.

Title: Claim for Refund of Excise Tax.

Description: Internal Revenue Code (IRC) sections 6402, 6204, and sections 301.6402–2, 301.6064–1, and 301–6404–3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Business or other for-profit, Individuals or household, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 125,292.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—42 hr., 49 min.

Learning about the law or the form—36 min.

Preparing, copying, assembling and sending the form to the IRS—1 hr., 19 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 1,838,901 hours.

OMB Number: 1545–1638.

Form Number: IRS Form 12196 (formerly Form 7130–A).

Type of Review: Extension.

Title: Small Business Office Order Blank.

Description: Form 12196 is to be used by small business outlets to order IRS tax forms and publications. The form can be faxed directly to the IRS Area Distribution Center for order fulfillment, packaging and mailing.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 45.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–8113 Filed 4–1–99; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 64, No. 63
Friday, April 2, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–18]

Proposed Modification of Class E Airspace; Hamilton, OH

Correction

In proposed rule document 99–7449, beginning on page 15140, in the issue of Tuesday, March 30, 1999, make the following correction:

§ 71.1 [Corrected]

On page 15141, in the third column, in § 71.1, under the heading **AGL OH E5 Hamilton, OH [Revised]**, in the second line, ''long. 84° 34′ 29″W.'' should read ''long. 84° 31′ 29″W.''

[FR Doc. C9–7449 Filed 4–1–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-69]

Modification of Class E Airspace; Lima, OH

Correction

In rule document 99–7453, beginning on page 14597, in the issue of Friday, March 26, 1999, make the following correction(s):

§ 71.1 [Corrected]

1. On page 14598, in the second column, under the heading **AGL OH E5 Lima, OH Revised**, in the first line ''Country'' should read ''County''.

2. On page 14598, in the second column, under the heading **AGL OH E5 Lima, OH Revised**, in the third line, ''Country'' should read ''County''.

3. On page 14598, in the second column, under the heading **AGL OH E5 Lima, OH Revised**, in the 10th line, ''Country'' should read ''County''.

[FR Doc. C9–7453 Filed 4-1–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-72]

Modification of Class E Airspace; Napoleon, OH

Correction

In rule document 99–7455 appearing on page 14596, in the issue of Friday, March 26, 1999, make the following correction:

§ 71.1 [Corrected]

On page 14596, in the third column, under the heading **AGL OH E5 Napoleon, OH [Revised]**, in the first line, ''Count'' should read ''County''.

[FR Doc. C9–7455 Filed 4-1-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-70]

Modification of Class E Airspace; Tiffin, OH

Correction

In rule document 99–7454, appearing on page 14597, in the issue of Friday, March 26, 1999, make the following correction(s):

§ 71.1 [Corrected]

1.On page 15497, in the third column, the second line, ''Merch'' should read ''Mercy''.

2. On page 15497, in the third column, in the sixth line, ''7.9'' should read ''7.0''.

[FR Doc. C9–7454 Filed 4-1-99; 8:45 am]

BILLING CODE 1505–01–D

Friday
April 2, 1999

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1000, et al.

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR Part	Marketing area
1000	General Provisions of Federal Milk Marketing Orders.
1001	New England.
1002	New York-New Jersey.
1004	Middle Atlantic.
1005	Carolina.
1006	Upper Florida.
1007	Southeast.
1012	Tampa Bay.
1013	Southeastern Florida.
1030	Chicago Regional.
1032	Southern Illinois-Eastern Missouri.
1033	Ohio Valley.
1036	Eastern Ohio-Western Pennsylvania.
1040	Southern Michigan.
1044	Michigan Upper Peninsula.
1046	Louisville-Lexington-Evansville.
1049	Indiana.
1050	Central Illinois.
1064	Greater Kansas City.
1065	Nebraska-Western Iowa.
1068	Upper Midwest.
1076	Eastern South Dakota.
1079	Iowa.
1106	Southwest Plains.
1124	Pacific Northwest.
1126	Texas.
1131	Central Arizona.
1134	Western Colorado.
1135	Southwestern Idaho-Eastern Oregon.
1137	Eastern Colorado.
1138	New Mexico-West Texas.
1139	Great Basin.

SUMMARY: This final decision consolidates the current 31 Federal milk marketing orders into 11 orders. This consolidation complies with the 1996 Farm Bill which mandates that the current Federal milk orders be consolidated into between 10 to 14 orders. This decision also conforms to the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, which requires that this decision be issued between February 1 and April 4, 1999, and extends the time for implementing Federal milk order reform amendments to October 1, 1999. This decision sets forth a replacement for the Class I price structure and replaces the basic formula price with a multiple component pricing system. This decision also establishes a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; reclassifies eggnog; and addresses other minor classification changes. Part 1000 is expanded to include sections that are identical to all of the consolidated orders to assist in simplifying and streamlining the orders.

This decision does not provide for conducting referendums of producers to determine if they approve of the issuance of the consolidated orders.

DATES: A notice to conduct a referendum on each of the consolidated orders will be published separately at a future date.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John__F__Borovies@usda.gov (after

April 19, 1999, the e-mail address will change to John.Borovies@usda.gov).

For specific information on the Final Regulatory Impact Analysis and the Civil Rights Impact Analysis contact: John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of Chief Economist, Room 2753, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–4664, e-mail address John__R__Mengel@usda.gov (after April 19, 1999, the e-mail address will change to John.Mengel@usda.gov).

SUPPLEMENTARY INFORMATION:

Major changes from the proposed rule issued on January 21, 1998, are as follows:

1. Consolidation of Marketing Areas

(a) The Western New York State order was removed from the proposed Northeast marketing area.

(b) Six currently-unregulated counties were removed from the consolidated Central marketing area.

(c) The current Western Colorado order was moved from the consolidated Western order to the consolidated Central marketing area along with 7 currently-unregulated Colorado counties.

2. Basic Formula Price Replacement

(a) The proposed Class III and Class IV pricing formulas are revised to adjust for product yields and make allowances that result in lowering the Class III and IV prices.

(b) Barrel cheese prices (NASS survey) are included in the Class III price formula.

(c) The basis for measuring the protein content in milk is changed from a test for total nitrogen to a test for true protein.

(d) Advance pricing for Class I will continue to be provided, but with a shorter time period (7 days vs. 25 days) prior to the effective month. The proposed rule had suggested a 6-month declining average mover.

(e) Provides for advance pricing for skim milk in Class II uses in the same manner as for Class I.

3. Class I Price Structure

Adopts a Class I price structure that uses the generally higher differential levels as proposed in Option 1A while retaining the pricing surface of the Department's preferred option.

4. Classification

(a) Cream cheese is moved from Class II to Class III.

(b) Shrinkage calculations are revised.

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I. Prior Documents

Prior documents in this proceeding include:

Proposed Rule: Issued January 21, 1998; published January 30, 1998 (63 FR 4802).

Correction: Issued February 19, 1998; published February 25, 1998 (63 FR 9686).

Extension of Time: Issued March 10, 1998; published March 13, 1998 (63 FR 12417).

II. Legislative and Background Requirements

Legislative Requirements

Section 143 of the Federal Agriculture Improvement and Reform Act of 1996 (Farm Bill), 7 USC 7253, required that by April 4, 1999,[1] the current Federal milk marketing orders issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), be consolidated into between 10 to 14 orders[2]. The Secretary of Agriculture (Secretary) is also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. In addition, the Farm Bill provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic prices for manufacturing milk.[3]

Besides designating a date for completion of the required consolidation, the Farm Bill further required that no later than April 1, 1997, the Secretary shall submit a report to Congress on the progress of the Federal order reform process that included: a description of the progress made toward implementation, a review of the Federal order system in light of the reforms

[1] Section 143(b)(2) requires that a proposed rule be published by April 4, 1998, and Section 143(b)(3) provides that ''in the event that the Secretary is enjoined or otherwise restrained by a court order from publishing or implementing the consolidation and related reforms under subsection (a), the length of time for which that injunction or other restraining order is effective shall be added to the time limitations specified in paragraph (2) thereby extending those time limitations by a period of time equal to the period of time for which the injunction or other restraining order is effective.''

[2] Since this proceeding was initiated on May 2, 1996, the Black Hills, South Dakota and the Tennessee Valley orders have been terminated. Effective October 1, 1996, the operating provisions of the Black Hills order were terminated (61 FR 47038), and the remaining administrative provisions were terminated effective December 31, 1996 (61 FR 67927). Effective October 1, 1997, the operating provisions of the Tennessee Valley order were terminated (62 FR 47923). The remaining administrative provisions of the Tennessee Valley order will be terminated before this consolidation process is completed.

[3] The Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specifies that the final decision, defined as the final rule for purposes of this legislation, will be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until September 30, 1999, to become a separate Federal milk marketing order.

required, and any recommendations considered appropriate for further improvements and reforms. This report was submitted to Congress on April 1, 1997.[4]

Finally, the 1996 Farm Bill specified that USDA use informal rulemaking to implement these reforms.

Background

The authorization of informal rulemaking to achieve the mandated reforms of the Farm Bill has resulted in a rulemaking process that is substantially different from the formal rulemaking process required to promulgate or amend Federal orders. The formal rulemaking process requires that decisions by USDA be based solely on the evidentiary record of a public hearing held before an Administrative Law Judge. Formal rulemaking involves the presentation of sworn testimony, the cross-examination of witnesses, the filing of briefs, the issuance of a recommended decision, the filing of exceptions, the issuance of a final decision that is voted on by affected producers, and upon approval by producers, the issuance of a final order.

The informal rulemaking process does not require these procedures. Instead, informal rulemaking provides for the issuance of a proposed rule by the Agricultural Marketing Service, a period of time for the filing of comments by interested parties, and the issuance of a final decision by the Secretary. Referendums will be conducted to determine approval of the final decision by the requisite number of producers before the new orders will become effective.

Full participation by interested parties has been essential in the reform of Federal milk orders. The issues are too important and complex to be developed without significant input from all facets of the dairy industry. The experience, knowledge, and expertise of the industry and public have been integral to the development of the rule. To ensure that maximum public input into the process was received, USDA developed a plan of action and projected time line. The plan of action developed consists of three phases: *Developmental, rulemaking,* and *implementation.*

The first phase of the plan was the *developmental* phase. The use of a *developmental* phase allowed USDA to interact freely with the public to develop viable proposals that accomplished the Farm Bill mandates, as well as related reforms. The USDA met with interested parties to discuss the reform process, assisted in developing ideas or provided data and analysis on various possibilities, issued program announcements, and requested public input on all aspects of the Federal order program. The *developmental* phase began on April 4, 1996, and concluded with the issuance of the proposed rule on January 21, 1998 (68 FR 4802).

The second phase of the plan is the *rulemaking* phase. The *rulemaking* phase began with the issuance and publication of the proposed rule. The proposed rule provided the public 60 days to submit written comments on the reform proposals to USDA. On March 10, 1998, (68 FR 12417) the comment period was extended for an additional 30 days until April 30, 1998. In addition to requests for written comments, four listening sessions were held to receive verbal comments on the proposed rule. All comments were reviewed and considered prior to the issuance of this rule.

The third and final phase of the plan is the *implementation* phase. The *implementation* phase begins after this rule is published in the **Federal Register**. This phase consists of informational meetings conducted by Market Administrator personnel and referendums.[5] The objective of the informational meetings is to inform producers and handlers about the newly consolidated orders and explain the projected effects on producers and handlers in the new marketing order areas. After informational meetings are held, the referendums will be conducted. Upon approval of the consolidated orders and related reforms by the required number of producers in each marketing area, a final order implementing the new orders will be issued and published in the **Federal Register**.

Although all of the issues regarding Federal milk order reform are interrelated, USDA established several committees to address specific issues. The use of committees allowed the reform process to be divided into more manageable tasks. The committees worked throughout the *developmental* and *rulemaking* phases. The committees established were: Price Structure, Basic Formula Price, Identical Provisions, Classification, and Regional. The Regional committee was divided into four subcommittees: Midwest, Northeast, Southeast, and West. Committee membership consisted of both field and headquarters Dairy Programs personnel. The committees were given specific assignments related to their designated issue and began meeting in May 1996.

In addition to utilizing USDA personnel, partnerships were established with two university consortia to provide expert analyses on the issues relating to price structure and basic formula price options. Dr. Andrew Novakovic of Cornell University led the analysis on price structure and published a staff paper entitled ''U.S. Dairy Sector Simulator: A Spatially Disaggregated Model of the U.S. Dairy Industry'' and a research bulletin entitled ''An Economic and Mathematical Description of the U.S. Dairy Sector Simulator''.[6] Dr. Ronald Knutson of Texas A&M University led the analysis on basic formula price options and published three working papers entitled ''An Economic Evaluation of Basic Formula Price (BFP) Alternatives'', ''The Modified Product Value and Fresh Milk Base Price Formulas as BFP Alternatives'', and ''Evaluation of 'Final' Four Basic Formula Price Options''.[7]

Actions Completed During Developmental Phase

USDA maintained frequent contact with the industry regarding the reform process. To begin, on May 2, 1996, the Agricultural Marketing Service (AMS) Dairy Division issued a memorandum to interested parties announcing the planned procedures for implementing the Farm Bill[8]. In this memorandum, all interested parties were requested to submit ideas on reforming Federal milk orders, specifically as to the consolidation and pricing structure of orders. Input was requested by July 1, 1996.

On June 24, 1996, USDA issued a press release announcing that a public forum would be held in Madison, Wisconsin, on July 29, 1996. The forum would address price discovery techniques for the value of milk used in

[4] Copies of the Report to Congress can be obtained from Dairy Programs at (202) 720–4392 or via the Internet at http://www.ams.usda.gov/dairy/.

[5] As previously noted, this is also the time period in which California can consider becoming a Federal order based on the Omnibus Consolidated and Emergency Supplemental Appropriations Bill provisions.

[6] Copies of these reports may be obtained by contacting Ms. Wendy Barrett, Cornell University, ARME, 348 Warren Hall, Ithaca, NY 14853–7801, (607) 255–1581,

[7] Copies of these reports may be obtained by contacting Dr. Ronald Knutson, Agricultural and Food Policy Center, Dept. of Ag. Economics, Texas A&M University, College Station, TX 77843–2124, (409) 845–5913.

[8] Copies of this announcement and all subsequent announcements and reports can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy/.

manufactured dairy products. Thirty-one Senators, Congressmen, university professors, representatives of processor and producer organizations, and dairy farmers made presentations at the forum.

On October 24, 1996, AMS Dairy Division issued a memorandum to interested parties requesting input regarding all aspects of Federal milk order reform and specifically as to its impact on small businesses. USDA anticipated that the consolidation of Federal orders would have an economic impact on handlers and producers affected by the program, and USDA wanted to ensure that, while accomplishing their intended purpose, the newly consolidated Federal orders would not unduly inhibit the ability of small businesses to compete.

On December 3, 1996, AMS Dairy Division issued a memorandum to interested parties announcing the release of the preliminary report on Federal milk order consolidation. The report suggested the consolidation of the then current 32 Federal milk orders into ten orders. (See Appendix A for report summary.) The memorandum requested input from all interested parties on the suggested consolidated orders and on any other aspect of the milk marketing order program by February 10, 1997.

On March 7, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of three reports that addressed the Class I price structure, the classification of milk, and the identical provisions contained in a Federal milk order. The price structure report consisted of a summary report and a technical report and discussed several options for modifying the Class I price structure. (See Appendix B for report summary.) The classification report recommended the reclassification of certain dairy products, including the removal of Class III-A pricing for nonfat dry milk. (See Appendix C for report summary.) The identical provisions report recommended simplifying, modifying, and eliminating unnecessary differences in Federal order provisions. (See Appendix D for report summary.) Comments on the contents of these reports, as well as on any other aspect of the program, were requested from interested parties by June 1, 1997.

On April 18, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of the preliminary report on Alternatives to the Basic Formula Price (BFP). The report contained suggestions, ideas, and initial findings for BFP alternatives. Over eight categories of options were identified with four options recommended for further review and discussion. (See Appendix E for report summary.) The memorandum requested input from all interested parties on a BFP alternative and on any other aspect of the milk marketing order program by June 1, 1997.

On May 20, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of a revised preliminary report on Federal milk order consolidation. The revisions were based on the input received from interested parties in response to the initial preliminary report on order consolidation. (See Appendix F for report summary.) Instead of suggesting 10 consolidated orders as in the first report, the revised report suggested 11 consolidated orders and suggested the inclusion of some currently unregulated territory. The memorandum requested comments from all interested parties on the suggested consolidated orders and on any other aspect of the milk marketing order program by June 15, 1997.

To elicit further input on the role of the National Cheese Exchange price in calculating the basic formula price, on January 29, 1997, the Secretary issued a press release announcing steps being taken by USDA to address concerns raised by dairy producers about how milk prices are calculated. In the press release, the Secretary requested further comments from interested parties about the use of the National Cheese Exchange in the determination of the basic formula price, which is the minimum price that handlers must pay dairy farmers for milk used to manufacture Class III products (butter and cheese) and the price used to establish the Class I and Class II prices. These comments were requested by March 31, 1997, and were useful in analyzing alternatives to the basic formula price in context of the order reform process.

Actions Completed During Rulemaking Phase

On January 21, 1998, USDA issued a proposed rule (68 FR 4802) that recommended consolidating the current 31 orders into 11 orders, proposed two options for consideration as a replacement for the Class I price structure, and recommended replacing the basic formula price. The proposed rule also recommended establishing a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; recommended reclassifying eggnog and cream cheese, addressing other minor classification issues; and recommended expanding part 1000 to include sections that are identical to all of the consolidated orders. A Preliminary Regulatory Impact Analysis (PRIA) was also issued that evaluated the costs and benefits of the proposed rule contents and alternatives. Comments were requested on the proposed rule and the PRIA on or before March 31, 1998. An informational packet describing the contents of the proposed rule was sent to interested parties.

On March 10, 1998, USDA issued a document that extended the time for filing comments on the proposed rule an additional 30 days, until April 30, 1998. The document also announced that USDA would conduct four listening sessions to assist interested parties in submitting comments to USDA. The listening sessions were held on March 30 in Atlanta, Georgia; Liverpool, New York; and Dallas, Texas; and on March 31 in Green Bay, Wisconsin.

On April 15, 1998, AMS Dairy Programs announced the issuance of a report entitled ''Report on the Impacts of the Federal Order Reform Proposals on Food and Nutrition Service Programs, Participants, and Administering Institutions'' by the Food and Nutrition Service of USDA. The report analyzed the potential impacts of the milk order reform pricing proposals contained in the proposed rule on the Food Stamp Program, the Women, Infants, and Children Program, and the National School Lunch and Breakfast Programs.[9] The report indicated that adoption of the proposed rule with either Class I price structure would have minimal economic impact on these programs. Comments on the report were requested by April 30, 1998. No comments were received.

Public Interaction and Input

As a result of the developmental phase announcements and forum, more than 1,600 individual comments were received by USDA. In addition to the individual comments, more than 2,000 form letters were received. As a result of the rulemaking phase proposed rule and listening sessions, nearly 4,500 additional comments were received. A further breakdown of the rulemaking comments by issue is as follows: 1,273 consolidation; 376 basic formula price; 4,224 Class I price structure; 101 classification; and 79 provisions applicable to all orders.

The proposed rule provided interested parties an opportunity to file comments until March 31, 1998. This period was later extended to April 30, 1998. Over 205 comments were

[9] Copies of this report can be obtained from Dairy Programs at (202) 720–4392, or via the Internet at http://www.ams.usda.gov/dairy/.

postmarked after the April 30th deadline. Most of these comments did not raise any issues that were not previously addressed by comments timely submitted and considered in this rulemaking.

All comments that were reviewed by USDA personnel were available for public inspection at USDA. To assist the public in accessing the comments, USDA contracted to have the comments scanned and published on compact discs. The use of this technology allowed interested parties throughout the United States access to the information received by USDA.

USDA also made all publications and requests for information available on the Internet. A separate page under the Dairy Programs section of the AMS Homepage was established to provide information about the reform process. To assist in transmitting correspondence to USDA, a special electronic mail account—Milk__Order__Reform@usda.gov—was opened to receive input on Federal milk order reforms.

USDA personnel met frequently with interested parties from May 1996 through the issuance of the proposed rule to gather information and ideas on the consolidation and reform of Federal milk orders. During this time period, USDA personnel addressed over 250 groups comprised of more than 22,000 individuals on various issues related to Federal order reform.

USDA personnel also conducted in-person briefings for both the Senate and House Agricultural Committees on the progress of Federal milk order reforms. Since May 1996, nine briefings were conducted for the committees. The briefings advised the committees of the plan of action for implementing the Farm Bill mandates; explained the preliminary report on the consolidation of Federal milk orders; explained the contents of the reports addressing Class I price structure, classification of milk, identical provisions and basic formula price; discussed the congressional report; and explained the proposed rule contents.

To ensure the involvement of all interested parties, particularly small businesses as defined in the Initial Regulatory Flexibility Analysis (IRFA), in the process of Federal order reform, three primary methods of contact were used: direct written notification, publication of notices through various media forms, and speaking and meeting with organizations and individuals regarding the issue of Federal order reforms. In addition, information has been made available to the public via the Internet. USDA also made one written program announcement specifically requesting information from small businesses. Comments were also specifically requested on the IRFA published in the January 21, 1998, proposed rule. More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. A few comments specifically addressed the IRFA, Executive Order 12866, and the paperwork reduction analysis.

All announcements and an information packet summarizing the proposed rule were mailed to over 20,000 interested parties, State Governors, State Department of Agriculture Secretaries or Commissioners, and the national and ten regional Small Business Administration offices. In addition, most dairy producers under the orders were notified through regular market service bulletins published by Market Administrators on a monthly basis. Press releases were issued by USDA for the May 2, 1996, December 3, 1996, January 29, 1997, March 7, 1997, and May 20, 1997, announcements; for the July 31, 1996, public forum; for the January 21, 1998, proposed rule; and for the March 30 and 31, 1998, listening sessions and extension of time for submitting comments.[10] These press releases were distributed to approximately 33 wire services and trade publications and to each State Department of Agriculture Communications Officer. These methods of notification helped to ensure that virtually all identified small businesses were contacted.

Departmental personnel, both in the field and from Washington, actively met with interested parties to gather input and to clarify and refine ideas already submitted. Formal presentations, round table discussions, and individually scheduled meetings between industry representatives and Departmental personnel were held. Over 250 organizations and more than 22,000 individuals were reached through this method. Of these individuals, approximately 13,400 were identified as small businesses.

[10] Copies of these press releases may be obtained from Dairy Programs at (202) 720–4392, or via the Internet at http://www.ams.usda.gov/news/newsrel.htm.

Executive Order 12988

This final decision has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing 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 law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Executive Order 12866

The Department is issuing the final decision in conformance with Executive Order 12866. The final decision is determined to be economically significant for the purposes of Executive Order 12866. When adopting regulations which are determined to be economically significant, agencies are required, among other things, to: Assess the costs and benefits of available regulatory alternatives; base regulatory decisions on the best reasonably-obtainable technical, economic, and other information; avoid duplicative regulations; and tailor regulations to impose the least burden on society consistent with obtaining regulatory objectives. Therefore, to assist in fulfilling the objectives of Executive Order 12866, the Department prepared a final Regulatory Impact Analysis (RIA) for this action. Information contained in the RIA pertains to the costs and benefits of the revised regulatory structure and is summarized in the following analysis. Copies of the RIA can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

This regulatory action is in accordance with section 143 of the

Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. 7253, (the Farm Bill) which required the Secretary of Agriculture (Secretary) to consolidate the existing 31 Federal milk marketing orders, as authorized by the AMAA, into between 10 and 14 orders. The Farm Bill further provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic formula prices for manufacturing milk. The Secretary was also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. Finally, the Farm Bill specified that the Department of Agriculture use informal rulemaking to implement these reforms.

The Farm Bill required that a proposed rule be published by April 4, 1998, and all reforms of the Federal milk order program be completed by April 4, 1999. However, the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specified that the final decision, defined as the final rule for purposes of this legislation, be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until September 30, 1999, to become a separate Federal milk marketing order.

The final decision sets forth the consolidation of the current 31 Federal milk orders into 11 orders. The marketing areas are: Northeast, Mideast, Upper Midwest, Central, Appalachian, Southeast, Florida, Southwest, Arizona-Las Vegas, Western, and Pacific Northwest. Several issues related to the consolidation of Federal milk orders are also addressed. The final decision contains a replacement for the current Class I price structure and the basic formula price (BFP). The final decision adopts a Class I price structure that uses the proposed Option 1B price surface as modified to provide for better alignment of Class I prices and increases the differential level by 40 cents. The current BFP is replaced with a multiple component pricing system that derives component values from surveyed prices of manufactured dairy products. These changes set the stage for increasing efficiencies in supplying the milk needs of Class I markets and address concerns that the BFP is no longer a statistically significant measure of the value of manufacturing milk.

The rule also classifies milk into four classes according to the products made from such milk. Milk used to produce defined fluid milk products is classified as Class I milk. Milk used to produce defined soft manufactured products is classified as Class II milk. Class III milk is milk used to produce cream cheese and defined hard manufactured cheeses, and Class IV milk is milk used to produce butter and all milk powders.

The minimum monthly price for milk classified as Class I is equal to the Class I differential specified for each marketing order plus the Class I price mover announced on or before the 23rd day of the month preceding the month for which the price is being announced. The Class I price mover is equal to the higher result from the formulas used to establish Class III and Class IV prices using weighted average prices for manufactured products as published by the National Agricultural Statistics Service (NASS) for the most recent two weeks preceding the 23rd of the month. Weekly prices are weighted by sales volumes reported by NASS.

Finally, this rule expands Part 1000 to include provisions that are identical within each consolidated order to assist in simplifying the regulations. These provisions include the definitions of route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment. In addition, the milk classification section, pricing provisions, and most of the provisions relating to payments have been included in the General Provisions. These changes adhere with the efforts of the National Performance Review—Regulatory Reform Initiative to simplify, modify, and eliminate unnecessary repetition of regulations. Unique regional issues or marketing conditions have been considered and included in each market's order provisions.

In the summary of the initial RIA for the January 21, 1998, proposed rule, the economic impact of certain individual sections of the regulations were discussed that were considered to be economically significant. Not all of the changes contained in the proposed rule were considered economically significant. The sections individually addressed in the January 21st proposed rule were marketing area consolidation, the BFP, the Class I pricing structure and classification provisions. Since these are adopted together in the final decision, this analysis reviews the impacts of adopting all of the provisions simultaneously on the dairy industry. The analysis also reviews the impacts of adopting the provisions contained in the January 21st proposed rule with two alternative Class I pricing structures.

The final RIA and the final decision explain in detail the components adopted in the Federal order regulations and analyzed by the model. A review of the projected economic impacts of the final decision and the projected economic impacts of the alternatives that were considered on dairy producers, processors, consumers, and international trade follows. The projected impacts are compared to the baseline projections over a 6-year period from the years of 2000–2005. The baseline assumes that the Class III price would be the BFP, the Class II price would be the BFP plus 30 cents, each region's Class I price would be the BFP plus the current Class I differential and the Class III-a price would continue. The RIA details the impacts of the final decision and the other options considered on each current order, the Federal orders combined, the State of California, and the United States.

The following table summarizes the impacts of adopting the newly consolidated orders and their specific provisions, including the Class I price structure adopted in this final decision. The table also provides data detailing the projected impacts of the consolidated orders and the specific provisions utilizing the two alternative Class I price structures—Location-Specific Differentials (Option 1A) and Relative-Value Specific Differentials (Option 1B). Since adopting new Federal milk order provisions affect both the regulated dairy industry and associated producers, as well as the unregulated and State regulated dairy industries, a comparison of the impacts both Federally and U.S.-wide are included where possible.

COMPARISONS OF CERTAIN IMPACTS OF CONSOLIDATED ORDER CHANGES UTILIZING THREE PRICE STRUCTURES ON FEDERAL ORDER (FED) AND U.S. DATA: 6-YEAR AVERAGES (2000–2005)[1]

	Unit	Baseline	Change from baseline		
			Final decision	Modified option 1B	Modified option 1A
Class I Diff. (Fed)	$/cwt	2.56	−0.29	−0.69	0.04
Class I price (Fed)	$/cwt	16.22	−0.19	−0.49	0.08
Class I price (U.S.)	$/cwt	16.26	−0.14	−0.38	0.06
All-Milk Price (Fed)	$/cwt	15.23	−0.02	−0.10	0.03
All-Milk Price (U.S.)	$/cwt	14.73	0.00	−0.05	0.04
Milk Marketings (Fed)[2]	mil lbs	111,182.0	8.3	−130.8	149.0
Milk Marketings (U.S.)	mil lbs	165,142.2	15.2	−90.9	128.7
Class I use (Fed)	mil lbs	46,955.7	42.0	106.7	−16.6
Class I use (U.S.)	mil lbs	58,782.2	37.7	98.8	−14.9
Cash Receipts (Fed)[3]	mil $	16,944.5	−2.5	−128.4	104.9
Cash Receipts (U.S.)[4]	mil $	24,347.9	3.5	−89.9	77.0
Retail Price (Fed)	$/gal	.....	−0.02	−0.04	0.01
Fluid Expend. (Fed)	mil $	7,617.8	−80.2	−215.4	36.4
Fluid Expend. (U.S.)	mil $	9,562.0	−79.1	−209.7	31.3
Manufac. Expend. (Fed)	mil $	9,326.7	77.7	87.0	68.5
Manufac. Expend. (U.S.)	mil $	14,785.9	82.5	119.8	45.7

[1] Includes the effects of the Class II, III, and IV pricing formulas.
[2] Changes in the Final Decision and Modified Option 1A marketings do not include the additional milk from the Upper Midwest and Chicago Regional orders that is expected to be pooled under these options.
[3] Cash receipts do not reflect the termination of the $0.15 per hundredweight transportation credit in the New York-New Jersey order and exclude the income from additional pooled milk in the consolidated Upper Midwest order for the Final Decision and Modified Option 1A.
[4] Cash receipts do not reflect the termination of the $0.15 per hundredweight transportation credit in the New York-New Jersey order and exclude the income from additional pooled milk in the consolidated Upper Midwest order for the Final Decision and Modified Option 1A.

As is evidenced by the summary table, the economic impacts resulting from the adoption of the final decision are minimal when compared to the total values included in the Federal order system and in the U.S. This is also true with the alternative options that were considered. Changes in the all-milk price, milk marketings, Class I use, and cash receipts all represent less than one percent of the total baseline projections. Although the total impacts are minimal from a national perspective, producers, processors, and consumers may experience a greater impact on a more localized level as is described in the RIA.

The consolidation of Federal milk orders into 11 orders with the adopted price structure and all other provision modifications of the final decision best adheres to the requirements of the Farm Bill while fulfilling the objectives of the AMAA. The changes adopted in the final decision enhance the efficiencies of fluid milk markets while maintaining equity among processors of fluid milk selling in marketing order areas and among dairy farmers supplying the areas' fluid demands. The final decision provisions achieve this while having minor overall impacts on the Federal order system and on the U.S. dairy industry. Although both of the alternatives considered also have minimal impacts, the final decision best achieves economic efficiencies, equity, and program objectives.

Final Decision

A brief review of the impacts that are projected to occur with the implementation of the final decision are:

Producers. In general, producers in markets located in the western, southwestern, and northeastern areas of the U.S. may not fare as well as producers located in other parts of the country, as measured by the all-milk price and cash receipts from milk marketings. The average all-milk price for the combined Federal order markets is expected to average $0.02 per hundredweight lower than the baseline. The average all-milk price is projected to increase in 13 current markets from $0.01 to $0.52 per hundredweight and decrease in 19 markets from $0.01 to $0.50. One market is estimated to average unchanged. The average all-milk price throughout the entire U.S. is projected to remain unchanged. It is important to recognize that the all-milk price can be impacted considerably by the change in the Class I utilization due to consolidation and the necessary alignment of Class I prices within consolidated areas.

Over the 2000–2005 period, gross cash receipts within the Federal order system are expected to increase an estimated $222.3 million primarily because of changes in transportation payments and the pooling of additional milk under the Federal order system. After adjusting for these changes, annual cash receipts are projected to decline from the baseline an average of $2.5 million during the 6-year period. With the baseline cash receipts averaging $16,944.5 million this represents a very insignificant reduction. Fifteen markets are projected to have increases with 18 markets projected to have decreases.

Processors. Since the final decision is expected to have little effect on where milk is produced, little impact is expected on fluid milk processors or manufacturers of dairy products. Impacts on fluid milk processors will likely result from changes in the minimum Class I and Class II prices that are the handler's obligation under the Federal order system. Fluid processors in 14 of the current Federal order markets will experience increased differentials, while processors in 17 of the markets will see decreases. Fluid processors in two markets will see no change. The estimated weighted average Class I differential for all current Federal order markets would decrease $0.29 per hundredweight. The all-market average Federal order Class I price would decrease $0.19 per hundredweight when compared to the baseline during the years of 2000–2005. The value of manufacturing milk would be increased, on average, $82.5 million per year during the six-year period.

Consumers. Since adoption of the final decision is projected to result in a slight decrease in the average Class I

price for the years of 2000–2005, it is expected that average retail prices will decrease about $0.02 per gallon. On an individual order basis, the changes in the average retail price per gallon may range from an increase of $0.06 to a decrease of $0.09. Although consumers will be spending less on fluid milk products, consumption is projected to remain relatively unchanged.

International Trade. Adopting the final decision is not expected to have a significant impact on domestic butter and nonfat dry milk prices and therefore, little change in international trade is expected. International trade of raw milk and fluid milk products between the United States, Mexico, and Canada should be unaffected. However, the increase in the Class II price could negatively affect the Mexican market for those products.

Other Alternatives

Although implementation of the consolidated orders with either the Option 1B or Option 1A price surface would still result in less than a projected one percent change in overall Federal order and U.S. prices, cash receipts, and marketings, these two alternatives do not promote market efficiencies, equity or program objectives as well as the provisions adopted and would not result in the most preferable allocation of resources over time. A brief review of the impacts that were projected to occur with the implementation of these two alternatives are:

Producers. In general, Option 1B would have reduced producer income in total and would have reduced the proportion of the Class I value represented in Federal order pools. Mainly producers located in the Upper Midwest and Florida areas would have benefitted while producers throughout the rest of the U.S. would have been negatively impacted. The all-milk price for all Federal order markets combined was expected to average $0.10 per hundredweight lower than the baseline during the years of 2000–2005. The average all-milk price was projected to increase in 10 current markets from $0.06 to $0.42 per hundredweight and decrease in 23 markets from $0.01 to $0.61 during this time period. This would have resulted in changing the gross cash receipts on an individual order basis during this period ranging from an annual average decrease of $48.4 million to an increase of $38.5 million. Overall, gross cash receipts would have averaged $128.4 million less than currently received.

Under Option 1A the all-milk price for all Federal order markets combined was expected to average $0.03 per hundredweight higher than the baseline during the years of 2000–2005. The average all-milk price was projected to increase in 15 current markets from $0.01 to $0.34 per hundredweight and decrease in 18 markets from $0.01 to $0.66. These changes would have resulted in changing the gross cash receipts on an individual order basis during this period ranging from an annual average decrease of $10.3 million to an increase of $48.4 million. Overall, gross cash receipts would have averaged $104.9 million higher than currently received.

Processors. Since Option 1B would have lowered the Class I differentials by a weighted average of $0.69 per hundredweight, the all-market average Class I price charged to fluid handlers would have declined by $0.49 per hundredweight when compared to the baseline during the years of 2000–2005. Lower Class I prices would have been expected to increase sales of fluid milk within the Federal order system by an annual average of 106.7 million pounds, representing less than a one percent increase. Similar responses would have occurred throughout the U.S. Fluid processors would have benefitted from lower fluid milk prices and increased fluid milk sales.

Option 1A would have increased Class I differentials by a weighted average of $0.04 per hundredweight resulting in the all-market average Class I price charged to fluid handlers increasing by $0.08 per hundredweight when compared to the baseline during the years of 2000–2005. Since the impact of the increased Class I prices would have resulted in an insignificant decrease in fluid milk consumption within the Federal order system, a decrease of 16.6 million pounds, and within the U.S., a decrease of 14.9 million pounds, this option would have little expected overall effect on processors or manufacturers of dairy products.

Consumers. Since adoption of Option 1B was projected to result in a decrease in the average Class I price for the period 2000–2005, it was expected that retail prices would decrease an average of $0.04 per gallon. On an individual order basis the changes in the average retail price per gallon would have ranged from an increase of $0.03 to a decrease of $0.12. As a result of the overall price decrease, consumers would have spent less on fluid milk products while increasing consumption. The increase in fluid consumption was estimated to be less than one percent.

Since adoption of Option 1A was projected to result in an increase in the average Class I price for the period of the years 2000–2005, it was expected to minimally increase retail prices an average of $0.01 per gallon. On an individual order basis the changes in the average retail price per gallon would have ranged from an increase of $0.05 to a decrease of $0.01. As a result of the price increase, consumers would have spent slightly more on fluid milk products and purchased about the same amount of milk for fluid use.

International Trade. Options 1B or 1A were not expected to have a significant impact on domestic butter and nonfat dry milk prices and therefore, little change in international trade would have resulted. International trade of raw milk and fluid milk products between the United States, Mexico, and Canada would have been unaffected.

In response to the final decision, the Food and Nutrition Service updated the analysis on the impacts of Federal Order reform provisions on Food and Nutrition Service programs, participants, and administering institutions. The updated report analyzes the potential impacts of the milk order reform pricing provisions contained in the final decision on the Food Stamp Program, the Women, Infants, and Children Program, and the National School Lunch and Breakfast Programs. The report also analyzes impacts of adopting either of the alternative Class I price structure options. The report indicates that adoption of the final decision provisions, as well as either of the alternatives considered, will have minimal economic impact on these programs. This report is included in the final RIA appendix.

The impacts of the provisions adopted in the final decision or either of the alternatives considered are minimal when compared to the total marketings and revenue generated in the dairy industry both on a national and Federal order basis. However, neither of the alternative options considered would appear to improve market efficiencies or equity as well as adopting the provisions contained in the final decision. Based on the analyses completed, the final decision regulations have been tailored to impose the least burden on society while meeting regulatory objectives. In doing so, these regulations will replace current regulations and will not duplicate any current regulations that may exist.

Civil Rights Impact Analysis Executive Summary

Pursuant to Departmental Regulation (DR) 4300–4, a Civil Rights Impact Analysis (CRIA) reviews the final

decision regarding reforms to the Federal Milk Marketing Order program to identify any provisions within the final decision with actual or potential adverse effects for minorities, women, and persons with disabilities.

The CRIA includes descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture (USDA); and (3) basics of the Federal milk marketing order program are provided for background information. The civil rights impact analysis of Federal Order Reform meets the requirements prescribed by DR 4300–4. As part of the analysis, the extensive outreach efforts of USDA through the entire reform process and after the final decision is published are highlighted. Additionally, statistical detail is provided of the characteristics of the dairy producer and general populations located within the current and consolidated marketing areas.

The analysis discloses no potential for affecting dairy farmers with specific characteristics differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability choosing to deliver milk to a Federal order regulated handler will receive the minimum blend price.

Copies of the Civil Rights Impact Analysis can be obtained from Dairy Programs at (202) 720–4392; any Market Administrator office; or via the Internet at http://www.ams.usda.gov/dairy/.

The Regulatory Flexibility Act and the Effects on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the rule on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act provides, in summary, that when preparing such analysis an agency shall address: The need for and objectives of the rule; summary of the significant issues raised in public comments, agency assessment of the issues raised, and changes made to the proposed rule based on these issues; the kind and number of small entities affected; the recordkeeping, reporting, and other requirements; and steps taken to minimize the economic impact on small entities.

This regulatory action is in accordance with section 143 of the Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. 7253, (the Farm Bill) which required the Secretary of Agriculture (Secretary) to consolidate the existing 31 Federal milk marketing orders, as authorized by the Agricultural Marketing Agreement Act of 1937 (AMAA), into between 10 and 14 orders. The Farm Bill further provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic prices for manufacturing milk. The Secretary was also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. Finally, the Farm Bill specified that the Department of Agriculture use informal rulemaking to implement these reforms.

The Farm Bill required that a proposed rule be published by April 4, 1998, and all reforms of the Federal milk order program be completed by April 4, 1999. However, the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specified that the final decision, defined as the final rule for purposes of this legislation, be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until September 30, 1999, to become a separate Federal milk marketing order.

The final decision sets forth the consolidation of the current 31 Federal milk orders into 11 orders. Several issues related to the consolidation of Federal milk orders are also addressed. The final decision contains a replacement for the Class I price structure and the basic formula price. These changes set the stage for increasing efficiencies in supplying the milk needs of Class I markets and address concerns that the BFP is no longer a statistically significant measure of the value of manufacturing milk. The final decision also changes the classification of milk by (1) establishing Class IV provisions which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; (2) reclassifying eggnog; and (3) making other minor classification changes. These changes recognize the position of butter and milk powders as residual products that balance the supply of milk with overall demand, and equalize the cost of competing products. Finally, this final decision expands part 1000 to include provisions that are identical within each consolidated order to assist in simplifying the regulations. These provisions include the definitions of route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment. In addition, the milk classification section, pricing provisions, and some of the provisions relating to payments have been included in the General Provisions. These changes adhere with the efforts of the National Performance Review—Regulatory Reform Initiative to simplify, modify, and eliminate unnecessary repetition of regulations. Unique regional issues or marketing conditions have been considered and included in each market's order provisions.

The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of business subject to the actions in order that small businesses are not unduly or disproportionately burdened. To accomplish this purpose, it first is necessary to define a small business. According to the Small Business Administration's definition of a ''small business,'' a dairy farm is a ''small business'' if it has an annual gross revenue of less than $500,000 and a handler is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Based on 1996 data, USDA identified approximately 80,000 of the 83,000 dairy producers (farmers) that had their milk pooled under a Federal order as small businesses. Thus, small businesses represent approximately 96 percent of the producers in the United States. By 1997 the total number of dairy producers that had their milk pooled under a Federal order had declined to about 79,000. It is estimated that nearly 76,000 are small businesses.

During 1997, 78,590 dairy farmers delivered over 105.2 billion pounds of milk to handlers regulated under the milk orders. This volume represents 68 percent of all milk marketed in the U.S.

and 70 percent of the milk of bottling quality (Grade A) sold in the country. The value of the milk delivered to Federal milk order handlers at minimum order blend prices was nearly $14.0 billion. Producer deliveries of milk used in Class I products (fluid milk products) totaled 44.9 billion pounds—42.7 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—77 percent of the total U.S. population.

On the processing side, there are over 1,200 individual plants associated with Federal orders, and of these plants, approximately 700 qualify as ''small businesses'' representing about 55 percent of the total. During October 1997, there were more than 485 fully regulated handlers (306 distributing plants of which 111 were small businesses and nearly 180 supply plants of which about 50 percent were small businesses), 51 partially regulated handlers of which 28 were small businesses and 111 producer-handlers of which all were considered small businesses for purposes of this final RFA, submitting reports under the Federal milk marketing order program.

The Federal milk order program is designed to set forth the terms of trade between buyers and sellers of fluid milk. A Federal order enforces the minimum price that processors (handlers) in a given marketing area must pay producers for milk according to how it is utilized. A Federal order further requires that the payments for milk be pooled and paid to individual dairy producers or cooperative associations on the basis of a uniform or average price. It is important to note that a Federal milk order, including the pricing and all other provisions, only becomes effective after approval, through a referendum, by dairy producers associated with the order.

Development of this final decision began with the premise that no additional burdens should be placed on the industry as a result of Federal order consolidation and reform. As a step in accomplishing the goal of imposing no additional regulatory burdens, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that this final decision would have little impact on reporting, recordkeeping, or other compliance requirements because these would remain almost identical to the current Federal order program. No new forms are required; however, some additional reporting will be necessary in the orders that are adopting multiple component pricing if the current orders do not contain these provisions. Overall, there would be slight change in the burdens placed on the dairy industry.

There are two principal reporting forms for handlers to complete each month that are needed to administer the Federal milk marketing orders. The forms are used to establish the quantity of milk used and received by handlers, the pooling status of the handler, the class-use of the milk used by the handler, the butterfat content and amounts of other components of the milk. This information is used to compute the monthly uniform price paid to producers in each of the markets. Handlers in the marketing areas adopting multiple component pricing will be required to complete additional information regarding the components of the milk and to assure that proper payments are made to producers. This information is necessary to establish the values of milk on the basis of milk components and to assure that producers are paid correctly. Many handlers already collect and report this information.

This rule does not involve additional information collection that requires clearance by the Office of Management and Budget beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

New territory, or pockets of unregulated territory within and between current order areas has been included in the consolidated marketing areas where such expansion will not have the effect of fully regulating plants that are not now regulated. The addition of these areas benefits regulated handlers by eliminating the necessity of reporting sales outside the Federal order marketing area for the purpose of determining pool qualification. Where such areas can be added to a consolidated area without having the effect of causing the regulation of any currently-unregulated handler, they are added.

Handlers not currently fully regulated under Federal orders may become regulated for two main reasons: first, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in the combined marketing areas meet the pooling standards of a consolidated order area. Second, a previously unregulated area in New York, Vermont, New Hampshire and Massachusetts was added on the basis of supporting information. As a result, previously unregulated handlers would become fully regulated. Because of these two reasons, 11 additional plants are expected to become fully regulated under the program. Of these 11 plants, it is estimated that 5 are small businesses that would need to comply with the reporting, recordkeeping, and compliance requirements. The completion of these reports will require a person knowledgeable about the receipt and utilization of milk and milk products handled at the plant. This most likely will be a person already on the payroll of the business such as a bookkeeper, controller or plant manager. The completion of the necessary reporting, recordkeeping, and compliance requirements does not require any highly specialized skills and should not require the addition of personnel to complete. In fact, much of the information that handlers report to the market administrator is readily available from normally maintained business records, and as such, the burden on handlers to complete these recordkeeping and reporting requirements is minimal. In addition, assistance in completing forms is readily available from market administrator offices. A description of the forms and a complete Paperwork Reduction Act analysis follows this section.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. The regulations contained in this final decision do not duplicate, overlap or conflict with any existing Federal rules.

Public Comments

More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. Of the comments submitted, the majority were received from dairy producers. The comments from the producers primarily addressed the issues of Class I pricing and consolidation.

A few comments were received that specifically addressed the initial regulatory flexibility analysis (IRFA).

These comments also addressed the issues of Class I pricing and consolidation and further addressed the issue of producer-handler regulation. The Small Business Administration submitted views specifically addressing exempt plant status and requesting further analysis of the impact of consolidation on previously unregulated entities, if possible.

Nearly all of the 1,000 comments addressed Class I pricing and discussed the impact of Option 1A or Option 1B on dairy producers' income. A majority of these comments supported Option 1A because it would maintain the revenue necessary to stay in business. Many commenters opposing Option 1B argued that the Class I differential decreases that would occur under this option would result in financial losses that would force many dairy farmers out of business. Comments filed by service providers such as feed and implement stores that claimed to be small businesses commented on the negative impact lower prices received by dairy producers had on surrounding community businesses. One commenter supporting Option 1A further stated that in order to comply with the purposes and objectives of the Regulatory Flexibility Act, as stated in the IRFA, a Class I price structure that avoids a burdensome financial impact on dairy farmers must be adopted.

About 200 of the comments received from declared small businesses addressed consolidation issues. These comments focused on the impact of including or excluding currently-unregulated areas. A majority of the comments focused on the Northeast order and the inclusion or exclusion of the currently-unregulated territories in New York, Pennsylvania, and Maryland. Comments supporting the inclusion of currently-unregulated territory discussed the need to include this territory to prevent inequitable, unfair and disorderly marketing conditions. One supporting commenter noted that the expansion into unregulated areas would result in more small businesses becoming subject to Federal order regulation but the commenter did not believe that it would unduly impact their ability to compete. Commenters opposing the inclusion of currently-unregulated Pennsylvania territory argued that producer returns would decline if handlers in this area were subject to Federal order regulations.

A few comments were received addressing the extent of regulation applied to producer-handlers. One commenter, a small business producer-handler, indicated that the combination of new definitions and classification of milk provisions will result in its regulation. The commenter argued that this effect is contrary to the IRFA that stated ''no additional regulatory burdens should be placed on the industry'' and to the intent of the proposed rule that stated the changes were not intended to fully regulate any producer-handler that is currently exempt from regulation. Other commenters suggested that producer-handlers should not be exempt from regulation if their route disposition of Class I products at wholesale exceeds 500,000 pounds per month or if they have retail sales other than at a retail establishment located on the premises of the producer-handler's plant. They argued that producer-handlers with route disposition above this limit cannot be considered small businesses and should be subject to regulation.

After reviewing the public comments filed by small businesses in combination with updated marketing data and information and updated analyses, changes were made to the provisions contained in the proposed rule. Not all of the changes requested by small businesses were feasible but when changes were beneficial to small businesses without affecting the objectives of the rule, they were incorporated. The changes made to the proposed rule, based in part on small business comments, are discussed below by issue.

Consolidation

The proposed rule advanced 11 consolidated Federal milk marketing orders. The marketing areas of these orders were expanded to include currently-unregulated areas if this did not result in the regulation of any currently-unregulated handlers or was not an area in which handlers are subject to minimum Class I pricing provisions under State regulations. After reviewing the issue in light of the public comments and updating the initial analysis based on more recent marketing data, 11 consolidated orders are adopted in the final decision, the same number as proposed in the January 21, 1998, rule, but with significant modifications being made to the marketing areas of the proposed Northeast and Western orders, and minor modifications to the marketing areas of the proposed Southeast, Mideast, Upper Midwest and Central orders. The final decision continues to omit currently-unregulated areas specified in the January 21st proposed rule and also omits currently-unregulated areas that comprise a significant distribution area for currently-unregulated handlers, some of which were proposed to be included in consolidated areas.

Numerous comments were received from small businesses supporting the inclusion of currently-nonregulated areas in the Northeast order. However, after considering the requirements of the Farm Bill, the consolidation of the existing orders does not necessitate expansion of the consolidated orders into unregulated areas or areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed or equal those that would be established under Federal milk order regulation. Such regulation could have the effect of reducing returns to producers already included under State regulation without significantly affecting prices paid by handlers who compete with Federally-regulated handlers.

Two changes made to the prior proposed rule as a result of comments submitted by small businesses related to the exclusion of territory in the consolidated marketing areas. These changes occurred in the Mideast and Central orders. The changes ensure that two currently-unregulated handlers maintain this status.

One change occurred in the Mideast order. Based on a comment received from Toft Dairy, Incorporated (Toft Dairy), a small business dairy processor, and Sandusky County Milk Producers Association, a dairy cooperative representing dairy farmers classified as small businesses, one partial and three entire counties in north Central Ohio are excluded from the Mideast marketing area. These areas are currently unregulated. The proposed rule had suggested including this currently-unregulated territory in the Mideast marketing area which would have resulted in the regulation of Toft Dairy. Since the intent of the consolidating marketing orders was not to cause the regulation of any currently-unregulated handler, these areas have been removed from the marketing area of the Mideast order. Toft Dairy will remain an unregulated processor unless its sales area changes significantly.

Another change occurred in the Central order. Based on a comment received from Central Dairy, Incorporated (Central Dairy), a small business dairy processor, six currently-unregulated counties in northeast Missouri that were proposed to be included in the Central order are excluded from the marketing area. These areas are currently unregulated. Central Dairy opposed inclusion of these six counties because the handler plans to expand its distribution into this

area. Again, since the intent of consolidating marketing orders was not to cause the regulation of any currently-unregulated handler these areas have been removed from the marketing area of the Central order.

Producer-Handlers

Another change to the proposed rule resulting from public comments involves producer-handlers. Since the intent of the proposed rule was not to increase regulation to any currently-unregulated producer-handlers, minor modifications have been made to the classification of milk provisions applicable to all orders and to the producer-handler definition in certain individual orders.

A comment submitted by Promised Land Dairy, a producer-handler defined as a small business, stated that the change in the classification of milk provisions combined with other order changes would result in their regulation. Promised Land Dairy argues that the addition of the words ''or acquired for distribution'' in § 1000.44(a)(3)(iv) would force milk delivered by a producer-handler to any store associated with a regulated handler to be sold at no more than the Class III price because it would be considered a receipt from a producer-handler. Promised Land Dairy argued that this would force producer-handlers to become fully regulated. In addition, they argued that changes made to the Southwest order's producer-handler definition are not warranted and would further result in the regulation of Promised Land Dairy.

The changes in the proposed rule were not intended to fully regulate any producer-handler that is currently exempt from regulation. Producer-handlers have been exempt from the pricing and pooling provisions of the orders for several reasons. First, the care and management of the dairy farm and other resources necessary for own-farm production and the management and operation of the processing are the personal enterprise and risk of the owner. Second, typically producer-handlers are small businesses that operate in a self-sufficient manner. Finally, producer-handlers do not have an advantage as either producers or handlers so long as they are responsible for balancing their fluid milk needs and cannot transfer balancing costs to other market participants.

While the provisions objected to by Promise Land Dairy would not directly regulate this entity, they could have a very serious negative economic impact on its continued operations as a producer-handler. Because it is still the intent of the Department to allow currently-unregulated producer-handlers to maintain this status, changes have been made to § 1000.44(a)(3)(iv) in the general provisions by removing the words ''or acquired for distribution'' and re-adding these words to § 1124.44, and changes have been made to the individual order definitions of producer-handlers. Hence, no changes are made in the final decision to regulate a producer-handler that is currently exempt from regulation.

Additional comments submitted by small businesses regarding producer-handlers advocated implementing a limitation on the exemption of producer-handlers based on size. The commenters suggested that the producer-handler exemption should be limited to those whose Class I route disposition is 500,000 pounds or less, or whose entire Class I disposition of fluid milk is made as retail sales from a retail establishment located on the premises of the producer-handler's processing plant.

Since the intent of the final decision is not to regulate any currently-unregulated producer-handlers, these requests have been denied. A review of October 1997 producer-handler route disposition data indicates that if a 500,000 pound Class I route disposition limit were implemented, 20 producer-handlers out of 111 producer-handlers, would become regulated. The Department's reasons for exempting producer-handlers as discussed previously have not changed and the intent of this rule is not to make changes to regulate currently-unregulated producer-handlers regardless of size. Consequently, these suggested changes have not been included in the final decision.

Class I Price Structure

Another change to the proposed rule, resulting in part from the public comments received, involves the Class I price structure. In the proposed rule the Department advanced two main price options—1A and 1B. The Department indicated a preference for Option 1B because it was more market-oriented. However, the Department recognized in the proposed rule that Option 1B would result in lower Class I prices and lower blend prices which would have a significant economic impact on small businesses, particularly producers. To lessen the impact, three phase-in program options were proposed to be adopted in conjunction with Option 1B. The objective of the phase-in programs was to provide dairy producers and processors the opportunity to adjust marketing practices to adapt to more market-determined Class I prices.

A majority of the public comments received from small businesses supported Option 1A. Many of the commenters opposing Option 1B indicated that the price levels established under this price structure would be significantly lower than present levels, and as a result, they—primarily dairy producers—would be forced out of business. Of the commenters supporting Option 1B, few supported the adoption of a phase-in program.

Option 1B was preferred by the Department because it would move the dairy industry into a more market-determined pricing system. Establishing a national Class I price structure based on results from the U.S. Dairy Sector Simulator model,[11] developed and administered by Cornell University, may increase market efficiencies in the dairy industry and lowering the differentials would allow marketing conditions to have a greater impact on actual Class I prices paid to producers who service the Class I market. The Department recognized that this would impact small businesses, both producer and processors, because less of the actual value of Class I milk would be regulated. In the proposed rule the Department stated the following:

> ''Smaller, less efficient producers would likely have a greater responsibility to bargain with processors for over-order premiums that adequately cover their costs. With processors less likely to face similar raw product costs, less efficient small processors may have to negotiate and/or sustain over-order price levels necessary to attract and maintain a sufficient supply of milk. Large businesses, both producers and processors, may be in a better competitive position to do this.'' (63 FR 4912)

After reviewing the public comments and updating marketing data and analyses of Option 1A and Option 1B, the Department adopted a Class I price structure that provides greater structural efficiencies in the assembly and shipment of milk and dairy products. The adopted Class I pricing structure establishes a price surface that utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will result in prices that generate sufficient revenue to assure an adequate supply of milk. The differential levels will better maintain equity by raising the level 40 cents per hundredweight higher than the level proposed in Option 1B. The higher differential level reduces the likelihood

[11] The U.S. Dairy Sector Simulator model is used to evaluate the geographic or ''spatial'' value of milk and milk components across the U.S. under the assumption of globally efficient markets. A more detailed description of the model is contained in the decision.

of class-price inversions, where the Class I prices are below the manufacturing milk prices for the month. Updated analysis conducted by the Interagency Dairy Analysis Team in the final Regulatory Impact Analysis [12] indicates that increasing the differential level lessens the economic impact of moving toward more market-orientation on small businesses.

Exempt Plant Limits

The Office of the Chief Counsel for Advocacy (Office of Advocacy) of the U.S. Small Business Administration submitted views on the IRFA pursuant to its authority under the Regulatory Flexibility Act, 5 U.S.C. 601, as amended by the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104–121, 110 Stat. 866 (1996). With regard to the impact of the order consolidation and pricing formulae, the Office of Advocacy stated that these issues should be left to the regulated community and the Department. The Office of Advocacy did comment that a system that ''best resembles the free market and imposes the least burden on the industry would be the best alternative.''

The Office of Advocacy requested an explanation of how the 150,000 pound handler exemption was derived and a determination of whether this exemption could be increased. They questioned whether a greater number of small entities would benefit from an increase in the limit. The Office of Advocacy further requested additional analysis on the impact of the consolidation of orders on previously unregulated entities, if possible.

The 150,000 pound handler exemption was determined after reviewing provisions currently contained in the Federal milk marketing orders. The 150,000 pound exemption was the highest level currently utilized, with some orders containing no such exemption. A review of the impact of this exemption level on distributing plants that were fully regulated in October 1997 indicated that 15 plants, 14 of which are small businesses, would become exempt from regulation based on this provision. In addition, five partially-regulated plants, four of which are small businesses, would also become exempt. No public comments were received addressing this issue.

Federal milk order regulations must balance the interests of small business dairy producers versus small business dairy processors. Although only processors are regulated under Federal milk orders, producers receive benefits from the regulations. Thus, whenever dairy processors are exempt from Federal order regulations they are not required to pay dairy producers minimum Federal order prices. Exempting processors from regulation directly impacts dairy producers.

Based on October 1997 data, a review of the impacts of increasing the exemption levels on processors was completed. As expected, increasing the level would allow additional processors to become exempt. In October 1997, 54 handlers had route disposition equal to or less than 150,000 pounds. An additional 57 handlers had route disposition between 150,000 to 1,000,000 pounds and 327 handlers had route disposition greater than 1 million pounds.

Although it may appear that increasing the exemption level would not result in exempting many additional plants, these plants receive milk from a significant number of producers, a majority of whom are small businesses. In addition, contrary to the intent of benefitting small businesses by increasing the exemption level, more handlers that are considered large businesses could become exempt from regulation. Implementing the 150,000 pound level results in two large businesses currently regulated (one fully-regulated and one partially-regulated) becoming exempt plants. When more large businesses become exempt it not only impacts producers, but also impacts other regulated handlers.

In an attempt to maintain a balance between the interests of both small handlers and small dairy producers, the 150,000 pound exemption is maintained. Based on previous experience, the exemption of plants of this size poses no economic threat to the order's regulated handlers.

Minimization of Significant Economic Impacts on Small Businesses

The Department developed the final decision aware of the impacts of its adoption on small businesses, both dairy producers and processors. In the final decision, the Department has minimized the significant economic impacts of these regulations on small entities to the fullest extent reasonably possible while adhering to the stated objectives. The Department reviewed the regulatory and financial burdens resulting from these regulations and determined, to the fullest extent possible, the impact on small businesses' abilities to compete in the market place. The Department reviewed the regulations from both the small producer and small processor perspectives attempting to maintain a balance between these competing interests.

The Farm Bill mandated that the current 31 orders be consolidated into between 10 to 14 orders. The Farm Bill also specified that other issues could be addressed. Eleven orders are adopted in the final decision as well as a new Class I price structure, a basic formula price replacement, classification of milk provisions, and the establishment of identical provisions in all orders where possible. The objectives of the final decision are (1) to comply with the requirements of the Farm Bill and (2) to make other changes in order provisions consistent with the goals and requirements of the AMAA. The focus of these changes is to enhance the efficiencies of fluid milk markets while maintaining equity among processors of fluid milk selling in marketing order areas and among dairy producers supplying the areas' fluid demands.

Federal milk order regulations do not disparately apply to small and large businesses. If a handler is regulated under a Federal milk order, the provisions of that order apply the same to all handlers regardless of size. Likewise, if a producer's milk is associated with a Federal order pool, the same pricing and payment provisions will be utilized for all producers regardless of size. This final decision addresses several issues and adopts provisions that will continue to apply equally to all businesses, both large and small. The provisions adopted herein attempt to reduce the economic impact of Federal milk order regulations on small businesses to the most reasonable extent possible.

After reviewing submitted comments and updating marketing data and analyses, changes were made to the provisions contained in the proposed rule. The IRFA discussed the projected impacts of the primary components of the proposed rule on small entities. These included consolidation, basic formula price, Class I price structure, and classification. Because Federal order provisions are interrelated, it was difficult to determine the overall impact of each component on small entities because the proposed rule contained two pricing options. To the fullest extent possible, such estimations were set forth in the proposed rule.

Below is a description of the primary components contained in the final decision that were discussed in the IRFA. For comparison purposes, impacts resulting from each component

[12] Copies of the Regulatory Impact Analysis can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

are briefly discussed. Because this rule establishes the specific provisions to be contained in Federal milk marketing orders, analysis of the impacts of the consolidated orders on small businesses is provided.

Consolidation

The IRFA discussed three order consolidation options: (1) The consolidated marketing areas suggested in the December 1996 Initial Preliminary Report on Order Consolidation; (2) the consolidated marketing areas suggested in the May 1997 Revised Preliminary Report on Order Consolidation; and (3) the consolidated marketing areas suggested in the proposed rule. Determining the specific economic impacts of marketing area consolidation on handlers, producers, and consumers is difficult. The IRFA detailed the assumptions utilized to quantify the economic effects of consolidation. The IRFA included an analysis of each of the three consolidation options on the weighted average use value to determine the potential impacts of each option on producers. The IRFA also included projections regarding the number of handlers that would be regulated under the consolidation options and the number of these handlers that are small businesses.

The consolidation of orders adopted in the final decision is a result of the examination and analysis of more recent marketing data in combination with the comments received on the proposed rule. This resulted in modifying significantly from the proposed rule the marketing areas of the Northeast and Western orders, and in making minor modifications to the marketing areas of the proposed Southeast, Mideast, Upper Midwest and Central orders. The consolidated orders adopted in the final decision are as follows (* denotes changes made from the proposed rule):

*1. NORTHEAST—current marketing areas of the New England, New York-New Jersey and Middle Atlantic Federal milk orders, with the addition of: the contiguous unregulated areas of New Hampshire, northern New York and Vermont; and the non-Federally regulated portions of Massachusetts. *The Western New York State order area (ten entire and 5 partial western New York counties) proposed to be included in the expanded Northeast order area has been omitted.

2. APPALACHIAN—Current marketing areas of the Carolina and Louisville-Lexington-Evansville (minus Logan County, Kentucky) Federal milk orders plus the marketing area of the former Tennessee Valley order, with the addition of 21 currently-unregulated counties in Indiana and Kentucky.

3. FLORIDA—current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

*4. SOUTHEAST—current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area; plus 11 northwest Arkansas counties and 22 entire Missouri counties that currently are part of the Southwest Plains marketing area; plus 6 Missouri counties that currently are part of the Southern Illinois-Eastern Missouri marketing area; plus 16 currently unregulated southeast Missouri counties (including 4 that were part of the former Paducah marketing area); plus 20 currently-unregulated Kentucky counties (including 5 from the former Paducah marketing area).

*A partial Missouri county that has been part of the Southwest Plains marketing area will become completely unregulated.

*5. MIDEAST—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and most currently-unregulated counties in Michigan, Indiana and Ohio. *One partial and 3 entire counties in north central Ohio are left unregulated, as they represent the distribution area of a currently-partially regulated distributing plant (Toft Dairy in Sandusky, Ohio).

*6. UPPER MIDWEST—current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin. *The Iowa Federal order marketing area portion of one Illinois county is added to the consolidated Upper Midwest marketing area and the Chicago Regional portion of another Illinois county is removed and added to the consolidated Central area.

7. CENTRAL—current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, Eastern Colorado, Nebraska-Western Iowa, Eastern South Dakota, Iowa (less the portion of an Illinois county that will become part of the consolidated Upper Midwest area) and *Western Colorado Federal milk orders, * plus the portion of an Illinois county currently in the Chicago Regional Federal order area, minus 11 northwest Arkansas counties and 1 partial and 22 entire Missouri counties that are part of the current Southwest Plains marketing area, minus 6 Missouri counties that are part of the current Southern Illinois-Eastern Missouri marketing area, plus 54 currently-unregulated counties in Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado, plus 8 counties in central Missouri *(six fewer than in the proposed rule) that are not considered to be part of the distribution area of an unregulated handler in central Missouri, *plus 7 currently unregulated Colorado counties located between the current Western and Eastern Colorado order areas.

8. SOUTHWEST—current marketing areas of Texas and New Mexico-West Texas Federal milk orders, with the addition of two currently-unregulated northeast Texas counties and 47 currently-unregulated counties in southwest Texas.

9. ARIZONA-LAS VEGAS—current marketing area of Central Arizona, plus the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

*10. WESTERN—current marketing areas of the Southwestern Idaho-Eastern Oregon and Great Basin Federal milk orders, minus Clark County, Nevada. *The Western Colorado order area, proposed to be included in the Western order area, is instead included in the consolidated Central order.

11. PACIFIC NORTHWEST—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon.

The consolidated orders presented herein reflect the most appropriate boundaries for the purpose of implementing the requirements of the Farm Bill. These orders attempt to avoid extending regulation to handlers whose primary sales areas are outside current Federal order marketing areas and who are not subject to Federal order regulation. These orders also minimize the regulatory burden placed on handlers.

Based on October 1997 data, it is projected that 306 distributing plants will be fully regulated and 32 distributing plants will be exempt. The number of fully-regulated small businesses will be 111. The number of fully-regulated small businesses is down from 164, a 32 percent decline from the proposed rule. This is mainly a result from either large business acquisitions of these small businesses or because they have gone out of business. Two small businesses that are currently unregulated will become regulated and, as mentioned previously, 14 fully regulated and four partially-regulated small businesses will become exempt.

Basic Formula Price

The IRFA reviewed the basic formula price replacement options considered. These options included pricing components based on their value in manufactured products which was proposed and is adopted in the final decision, economic formulas, futures markets, cost of production, competitive pay pricing, and pricing differentials only.

The rule closely follows the pricing plan described in the proposed rule by replacing the current basic formula price (BFP) with a multiple component pricing system that derives component values from surveyed prices of manufactured dairy products. The adopted pricing system determines butterfat prices for milk used in Class II, Class III and Class IV products from a butter price; protein and other solids prices for milk used in Class III products from cheese and whey prices; and nonfat solids prices for milk used in Class II and Class IV products from nonfat dry milk product prices. The specific formulas used to calculate the prices are described in complete detail in the final decision.

All market participants, both large and small, would be affected by the BFP replacement in the same manner. There would be no uneven impact on market participants on the basis of size. However, the existence of minimum order pricing serves to assure that large handlers pay no less for their milk than smaller entities, and that small producers receive at least the same minimum uniform price for the milk or components of milk they produce as large producers. Consumers can be assured that the prices generally charged for dairy products are prices that reflect, as closely as possible, the forces of supply and demand in the market.

Impact of Multiple Component Pricing Provisions on Small Entities

As set forth in the proposed rule, seven of the 11 orders adopted in the final decision provide for milk to be paid for on the basis of its components—multiple component pricing (MCP).

Five of the seven MCP orders also provide for milk values to be adjusted according to the somatic cell count of producer milk. The equipment needed for testing milk for its component content can be very expensive to purchase, and requires highly-skilled personnel to maintain and operate. The cost of infra-red analyzers ranges from just under $100,000 to $200,000. The infra-red machines that are used by most laboratories would test for total solids and somatic cells at the same time the butterfat and protein tests are done.

No new report forms are needed under multiple component pricing; however, some additional reporting is necessary to enable handlers' values of milk to be determined on the basis of components, and to assure that producers are paid correctly. For the market administrators to compute the producer price differential, handlers would need to supply additional information on their currently-required monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers would be required to report pounds of protein, pounds of other solids, and, in 5 of the orders, somatic cell information. This data would be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers (that is, the cooperative acts as a handler); and, in some cases, receipts of bulk milk received by transfer or diversion.

Since producers would be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler would be required to supply the producer not only with the information currently supplied, but also, (a) the pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also. Many handlers already report this additional information. It should be noted that handlers already are required to report information relative to pounds of production, butterfat and rates of payment for butterfat and hundredweight of milk to the appropriate Market Administrator.

Of over 74,000 producers whose milk was pooled in December 1996 under 23 of the current orders that would be part of consolidated orders providing for multiple component pricing, the milk of 52,500 of these producers was pooled under 13 current orders that have MCP. Handlers in these markets already have incurred the initial costs of testing milk for its component content, and have made the needed transition to reporting the component contents of milk receipts on their handler reports to the market administrators, and on their reports of what they have paid producers.

Of the remaining 21,750 producers who would be affected by MCP provisions under a Federal order (including an estimated 20,650 producers qualifying as small businesses), the milk of approximately 13,000, or 60 percent, currently is received by handlers who test or have the capability of testing for multiple components and, in many cases, somatic cells. Many of these handlers also report component results to the producers with their payments. Almost all of the producers whose milk currently is not being tested or paid for on the basis of components are located in the New England and New York-New Jersey marketing areas, which would be consolidated with the Middle Atlantic area into the Northeast order.

Accommodation has been made to ameliorate handlers' expenses of testing producer milk for component content. As component pricing plans have been adopted under a number of the present Federal milk orders since 1988, the component testing needed to implement these pricing plans has been performed by the market administrators responsible for the administration of the orders involved for handlers who have not been equipped to make all of the determinations required under the amended orders. It has been made clear in the decisions under which these plans have been adopted that handlers who would find it unduly burdensome to obtain the equipment and personnel needed to accomplish the required testing may rely on the market administrators to verify or establish the tests under which producers are paid. As noted above, however, many handlers not now subject to MCP provisions under Federal orders have nevertheless already undertaken multiple component testing and payment programs.

Class I Price Structure

The IRFA discussed two price structure options—location-specific differentials (Option 1A) and relative-value specific differentials (Option 1B). The IRFA set forth the projected impacts that these two price structures would have on producers and processors.

The price structure adopted in this final decision resulted from an examination and review of more recent marketing data in combination with the comments received on the proposed rule. As discussed previously, the Department adopted a Class I price structure that provides greater structural efficiencies in the assembly and shipment of milk and dairy products. The adopted Class I pricing structure establishes a price surface that utilizes

USDSS model results adjusted for all known plant locations and establishes differential levels that will result in prices that generate sufficient revenue to assure an adequate supply of milk. The differential levels will better maintain equity by raising the level 40 cents per hundredweight higher than the level proposed in Option 1B. The higher differential level reduces the likelihood of class-price inversions, where the Class I prices are below the manufacturing milk prices for the month. Updated analysis conducted by the Interagency Dairy Analysis Team in the final Regulatory Impact Analysis [13] indicates that increasing the differential level lessens the economic impact of moving toward more market-orientation on small businesses.

The adopted Class I price structure reduces Class I differentials from current levels in 17 markets ranging from $0.04 per hundredweight in the Ohio Valley order to $1.18 per hundredweight in the Eastern Colorado order. Option 1B would have reduced differentials from current levels in 29 markets ranging from $0.01 in Central Illinois order to $1.58 in the Eastern Colorado order. The adopted Class I price structure will increase Class I differentials in 14 markets ranging from $0.08 in the Greater Kansas City order to $0.57 in the Southeastern Florida order and leaves two orders unchanged. Option 1B would have increased Class I differentials in only two markets—$0.15 in Chicago Regional and $0.17 in Southeastern Florida—and would have left two orders unchanged. Option 1A would have increased differentials in 21 markets ranging from $0.01 per hundredweight in New England, New York-New Jersey, and Unregulated New York and New England to $0.50 in the Upper Midwest order, lowered differentials in seven markets from $0.04 in Ohio Valley to $0.18 in Eastern Colorado, and left four markets unchanged.

Although the adopted Class I price structure will result in price changes that affect both large and small entities, this option best meets the objectives of the AMAA. The adopted Class I price structure recognizes that there are limitations in the extent that the marketplace can be relied upon to establish prices to producers that are equitable and reasonable given marketing conditions. Similarly, it recognizes that handlers will be assured a higher degree of price equity. The adopted Class I price structure best provides the incentives necessary for increased efficiency in the organization and distribution of the milk supply and dairy products.

Classification Provisions

The IRFA discussed the classification of milk provisions contained in the proposed rule. The IRFA concluded that the classification of milk provisions would not have a significant economic impact on a substantial number of small entities. With two primary exceptions, these changes are adopted in the final decision. The two exceptions are: (1) Leaving cream cheese as a Class III product as currently classified, and (2) leaving the fluid milk product exclusion standard for products packaged in ''all-metal, hermetically-sealed containers'' as currently classified. In addition, other minor changes have been made including revising the shrinkage provisions to more closely resemble current provisions, re-adding the provision for milk that is dumped or used for animal feed, and classifying inventory of fluid milk products and fluid cream products in bulk form in Class IV. One additional change, as previously discussed in the comment section, was made to ensure that producer-handlers that are not currently regulated by the Federal order program will maintain this status. The provisions improve reporting and accounting procedures for handlers and provide for greater market efficiencies.

Conclusion

A review of the impacts on small entities of consolidating the current Federal milk orders into 11 orders in conjunction with the basic formula price replacement, classification provisions, and the three different Class I price structure options, indicates that the provisions set forth in the final decision adhere to the mandates of the Farm Bill, and provides more market efficiencies while minimizing the impact of these regulations on small entities. Since the Federal order program serves to benefit dairy producers by regulating dairy processors through classified pricing, provisions must be established that maintain a balance between the interests of small dairy producers and processors. The provisions contained in the final decision best maintain this balance.

The adoption of the consolidated orders and the provisions contained therein, including the adopted Class I price structure, will affect some small entities. Producers located in the western, southwestern, and northeastern areas may not fare as well as producers in other parts of the country when comparing the all-milk prices and cash receipts from milk marketings to current baseline projections. These producers represent approximately one-third of the total producers associated with Federal orders. Of these producers, about 30 percent are considered small businesses. When compared to the baseline, over a 6-year period from the years of 2000–2005, the all-milk price for all Federal orders is expected to decrease an average of $0.02 per hundredweight. Changes in the all-market price on an individual order basis is projected to range from a decrease of $0.50 per hundredweight to an increase of $0.52 per hundredweight. Cash receipts are expected to increase by an estimated $222.3 million primarily because of changes in transportation payments and the pooling of additional milk. After adjusting for these changes, cash receipts are projected to decline from the baseline an average of $2.5 million during the 6-year period. With the baseline cash receipts averaging $16,944.5 million this represents a very small reduction.

Since the final decision is projected to have minor effects on where milk is produced, little impact is expected on processors or manufacturers of dairy products. A majority of the fully-regulated processors associated with Federal orders will benefit from a decrease in Class I prices. About 209 processors, 74 of which are small businesses, would experience decreases ranging from $0.04 to $1.18 per hundredweight. About 69 processors, 22 of which are small businesses, located primarily in the Midwest and Florida areas, would experience Class I price increases ranging from $0.08 to $0.57 per hundredweight. About 28 processors, 14 of which are small businesses, would experience no change in Class I prices.

Implementing the consolidated orders with the modified Option 1B price structure would have a significant impact on many small entities, both producers and processors. Producers located everywhere except the Midwest and Florida regions would have been negatively impacted. When compared to the baseline, over a 6-year period from the years of 2000–2005, the all-milk price for all Federal orders was projected to annually average $0.09 per hundredweight lower, with individual order changes ranging from −$0.61 per hundredweight to $0.42 per hundredweight. Cash receipts were expected to annually average over $100 million less than the baseline, a .01 percent decrease.

[13] Copies of the Regulatory Impact Analysis can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

Most fully-regulated fluid processors would have benefitted from the decrease in Class I differentials. Lower differentials would have reduced Class I prices in 29 of the current markets from between $0.01 to $1.58 per hundredweight. Two markets would have had increases of $0.15 and $0.17 per hundredweight in Class I prices. When compared to the baseline, the Class I price for all Federal orders was projected to average $0.49 per hundredweight lower over a 6-year period from the years of 2000–2005. Lower Class I prices would have been expected to increase U.S. sales of fluid milk by 98.8 million pounds annually. Most fluid processors would have benefitted from the lower fluid milk prices and increased fluid milk sales.

Although most fluid processors would have benefitted from the consolidation of orders with the modified Option 1B price surface, only about one-third of the fully-regulated plants are small businesses and these plants may have been negatively impacted. With less of the actual value of fluid milk represented by the minimum prices established by Federal orders, more emphasis would have been placed on processors' and producers' abilities to negotiate and/or sustain over-order prices that might be necessary to maintain an adequate supply of milk. This would have resulted in less handler equity which could have placed small processors at a disadvantage in competing for a supply of milk.

Adoption of this option would have resulted in large fluid processors benefitting from the regulations at the expense of more than 50 percent of the total producers who would have experienced price decreases. Additionally, small processors would not have been assured equity in competing with large businesses for a milk supply. Hence, the Department determined the impact of consolidating orders with the modified Option 1B price structure would have had a more burdensome financial impact on a significant number of small businesses.

Implementing the consolidated orders with the Option 1A price structure would have minimal overall impact on small businesses. When compared to the baseline, the all-milk price for all Federal orders was projected to average $0.03 per hundredweight higher, with individual order changes ranging from −$0.66 per hundredweight to $0.34 per hundredweight over a 6-year period from the years of 2000–2005. Cash receipts were expected to average over $482.1 million more than the baseline, a .02 percent increase. Nearly 50 percent of the producers would have benefitted from this modest increase.

Since this option is projected to have minor effects on where milk is produced, little impact would have been expected on processors or manufacturers of dairy products. Option 1A would have increased Class I differentials by an average of $0.04 per hundredweight resulting in the all-market average Class I price charged to fluid handlers increasing by $0.08 per hundredweight when compared to the baseline during the years of 2000–2005. Processors would have experienced a Class I price increase in 21 of the current orders ranging from $0.01 to $0.50 per hundredweight, affecting nearly 190 fully-regulated processors of which about one-third are small businesses. Since the impact of the increased Class I prices would have resulted in an insignificant decrease in fluid milk consumption within the Federal order system, a decrease of 17.1 million pounds, and within the U.S., a decrease of 14.9 million pounds, this option would have little expected effect on processors or manufacturers of dairy products.

Implementing the consolidated orders with the Option 1A price structure would likely have minimized the financial impact of Federal milk orders on small entities. However, this option does not facilitate the movement towards a more efficient system of supplying fluid milk to meet market demands within the Federal order regulatory program. Although this option minimizes the impact of regulations on small businesses, it does not best meet the desired outcomes and objectives of the final decision.

The provisions adopted in the final decision best fulfill the requirements of the AMAA while minimizing the regulatory burdens on small businesses. The consolidated orders, with the adopted Class I price structure and other provisions, ensures that the Federal order program will continue to establish and maintain market stability and orderly marketing conditions for milk. The adopted provisions will further provide that milk prices are established at levels high enough to generate sufficient revenue for producers to maintain adequate supplies of milk while providing equity to handlers. The provisions contained in the final decision do not unduly or disproportionately burden small businesses.

Paperwork Reduction Act of 1995

The information collection requirements contained in this decision previously were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0581–0032, through September 30, 2001.

The amendments set forth in the final decision do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. Chapter 35. Following is a general description of the reporting and recordkeeping requirements, reasons for these requirements and an estimate of the annual burden on the dairy industry.

Title: Report Forms Under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives).

OMB Control Number: 0581–0032.

Expiration Date of Approval: September 30, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Federal Milk Marketing Order regulations authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), require milk handlers to report in detail the receipt and utilization of milk and milk products handled at each of their plants that are regulated by a Federal Order. The data are needed to administer the classified pricing system and related requirements of each Federal Order.

Rulemaking amendments to the orders must be approved in referenda conducted by the Secretary.

The terms of each of the current milk marketing orders are found at 7 CFR parts 1001–1199; the terms of each of the proposed orders in this document are found at 7 CFR parts 1001–1135. The authority for requiring reports is found at 8c(5) and (7) and 8d of the Act. The current authority for requiring records to be kept is found in the general provisions at 7 CFR part 1000.5. In the final decision, this authority is found in the general provisions at 7 CFR part 1000.27. The Act also provides for milk marketing agreements, but there are none in effect.

A Federal milk marketing order is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. It requires that handlers of milk for a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under an order on the basis of evidence concerning the supply and demand conditions for milk in the market. A milk order requires that payments for milk be pooled and paid to individual farmers or cooperative associations of

farmers on the basis of a uniform or average price. Thus, all eligible farmers (producers) share in the market wide use-values of milk by regulated handlers.

The Report of Receipts and Utilization and the Producer Payroll Report are completed by regulated milk handlers and milk marketing cooperatives and are the principal reporting forms needed to administer Federal milk marketing orders.

The orders also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers. Each milk order is administered by a market administrator who is an agent of the Secretary of Agriculture. Part of the market administrator's duties are to prescribe reports required of each handler, and to assure that handlers properly account for milk and milk products, and that such handlers pay producers and associations of producers according to the provisions of the order. The market administrator employs a staff that verifies handlers' reports by examining records to determine that the required payments are made to producers. Most reports required from handlers are submitted monthly to the market administrator. Confidentiality of information collection is assured through section 608(d) of the Act, which imposes substantial penalties on anyone violating these confidentiality requirements.

The forms used by the market administrators are required by the respective milk orders that are authorized by the Act. The forms are authorized either in the general provisions (Part 1000) or in the sections of the respective orders. The forms are used to establish the quantity of milk received by handlers, the pooling status of handlers, the class-use of the milk used by the handler and the butterfat content and amounts of other components of the milk.

The frequency of performing these recordkeeping and reporting duties varies according to the form; the frequency ranges from ''on occasion'' to ''annually'' but ''monthly'' is perhaps most common. In general, most of the information that handlers report to the market administrator is readily available from normally maintained business records. Thus, the burden on handlers to complete these recordkeeping and reporting requirements is expected to be minimal. In addition, assistance in completing forms is readily available from market administrator offices.

Regarding the use of improved information technology to reduce the reporting and recordkeeping burden, the information requested is the minimum necessary to carry out the program. Since the type of information required to be collected and the certification and reporting of that information is required, no other alternative to the mode of information collection has been found. However, where possible, reported information is accepted using computer tapes or diskettes as alternatives to submitting the requested information on these report forms. Comments were requested to help assess the number of handlers using computers, word processors and other electronic equipment to create and store documents, as well as the extent to which the Internet is used to exchange information.

We are confident that the information we collect does not duplicate information already available. Dairy Programs has an ongoing relationship with many organizations in the dairy industry that also respond to other governmental agencies. Thus, we are aware of the reports dairy industry organizations are submitting to other government agencies.

Information collection requirements have been reduced to the minimum requirements of the orders, thus minimizing the burden on all handlers—those considered to be small as well as large entities. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. The primary source of data used to complete the forms are routinely used in all business transactions. Thus, the information collection and reporting burden is relatively small. Requiring the same reporting requirements for all handlers does not significantly disadvantage any handler that is smaller than industry average.

If the collection of this information were conducted less frequently, data needed to keep the Secretary informed concerning industry operations would not be available. Timing and frequency of the various reports are such to meet the needs of the industry and yet minimize the burden of the reporting public.

The collection of the required information is conducted in a manner consistent with guidelines in 5 CFR 1320.6. The orders require that the market administrator compute monthly minimum prices to producers based on monthly information. Without monthly information, the market administrator, for example, would not have the information to compute each monthly price, nor to know if handlers were paying producers on dates prescribed in the order, such as the partial payment for milk received the first 15 days of the month and the final payment which is payable after the end of the month. The Act imposes penalties for order violations, such as the failure to pay producers not later than prescribed dates. The orders require payments to and from the producer-settlement fund to be made monthly. Also, class prices are based on the monthly Basic Formula price series.

Annual Reporting and Recordkeeping Burden

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.87 hours per response.

Respondents: Milk Handlers and Milk Marketing Cooperatives.

Estimated Number of Respondents: 772.

Estimated Number of Responses per Respondent: 35.

Estimated Total Annual Burden on Respondents: 23,858 hours.

Estimated annual cost to respondents for report preparation: $276,514 (23,858 hours at $11.59 per hour). Although hourly rates vary among handlers in various localities, the wage paid to clerical workers engaged in report preparation is estimated to be comparable to about a grade GS–7, step 1.

It is important to note that the burden being reported is an estimate of the amount of time that would be required of current program participants.

It is expected that the final decision should have little impact on the reporting and recordkeeping burden on handlers regulated under the Federal milk marketing order program. In fact, as a result of the consolidation of Federal orders from 31 to 11 as proposed, an overall reduction in reporting and recordkeeping requirements may occur due to greater uniformity in forms used and fewer ''special'' forms that currently apply to one or a few orders. There should also be a reduction in the burden on handlers that currently file reports for individual orders that are being consolidated.

Non-substantial changes would be necessary on the required reports and records to correctly identify the new Federal market order (e.g. the current—and separate—reports for the Upper Florida, Tampa Bay and Southeastern Florida marketing areas would be combined into one report for the Florida marketing area).

Request for Public Input on Analyses

Comments on the Executive Order 12866 analysis, the initial regulatory flexibility analysis, and the paperwork reduction analysis were requested in the proposed rule, which was published in the **Federal Register** on January 30, 1998. Specifically, interested parties were invited to submit comments on the regulatory and informational impacts of this proposed rule on small businesses. More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. A few comments specifically addressed the initial regulatory flexibility analysis (IRFA), the Executive Order 12866, and the Paperwork Reduction Analysis. These comments have been considered and addressed above.

Preliminary Statement

The material issues in this rule relate to:

1. Consolidation of marketing areas.
2. Basic formula price replacement and other class price issues.
3. Class I pricing structure.
4. Classification of milk and related issues.
5. Provisions applicable to all orders.
6. Regional issues:
   a. Northeast Region.
   b. Southeast Region.
   c. Midwest Region.
   d. Western Region.
7. Miscellaneous and administrative matters.
   a. Consolidation of the marketing service, administrative expense, and producer-settlement funds.
   b. Consolidation of the transportation credit balancing funds.
   c. General findings.

II. Discussion of Material Issues and Amendments to the Orders

A discussion and explanation of the material issues and determinations contained in this rule are as follows:

1. Consolidation of Marketing Areas

Subtitle D, Chapter 1 of the 1996 Farm Bill, entitled ''Consolidation and Reform of Federal Milk Marketing Orders,'' requires, among other things, that the Federal milk marketing orders be limited to not less than 10 and not more than 14. Nearly 1,300 public comments received in response to the proposed rule addressed the subject of order consolidation. Preceding the proposed rule, two preliminary reports on order consolidation were issued by the Agricultural Marketing Service's Dairy Division, in December 1996 and May 1997. The proposed rule, issued in January 1998, included consideration of public comments received in response to these preliminary reports.

The 1996 Farm Bill specifically provides for the inclusion of California as a separate Federal milk order, but the provision is contingent upon petition and approval by California producers. The Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time for implementing Federal milk order reform amendments from April 4, 1999 to October 1, 1999. The legislation provides that California has from the date of issuance of this final decision until September 30, 1999, to become a separate Federal milk order. This additional time is intended to allow California dairy interests the opportunity review this final decision to determine whether a Federal milk order for California, consistent with the provisions adopted for the consolidated orders, would best meet their milk marketing regulatory needs.

Over 150 comments were received that addressed the issue of a Federal milk order for California, with approximately 120 of them being a form letter advocating a California Federal milk order. These comments, and a number of additional individual comments, came primarily from commenters outside California who expressed a need for California and Federal order prices for milk used in manufactured products to be in closer alignment to eliminate California manufacturers' perceived competitive advantage in product prices.

Interest in a Federal milk order has been expressed by some California producers, but for the most part California commenters expressed a desire to have a chance to study and comment on this final decision before deciding whether to pursue a proposal for a California Federal order.

The preliminary reports, the proposed rule, and this final decision concerning order consolidation were prepared using data gathered about receipts and distribution of fluid milk products by all known distributing plants located in the 47 contiguous states, not including the State of California. Data describing the sources and disposition of fluid milk products for the month of October 1995 were used to compile the initial Preliminary Report. In response to comments and questions about certain marketing area boundaries and changes in marketing conditions in some of the markets after publication of the initial Preliminary Report, data concerning those markets was updated to January 1997, and more detailed information was gathered regarding the geographic distribution of route sales by individual handlers and their specific sources of producer milk. The updated and more detailed data were used in re-examining the appropriate boundaries of the initially-suggested Northeast, Appalachian, Southeast, Mideast, Central, and Western marketing areas for the Revised Preliminary Report on Order Consolidation. The Revised Preliminary Report, in turn, was modified on the basis of comments received for development of the proposed rule.

Nearly 1,300 comments filed in response to the proposed rule had some applicability to the topic of order consolidation. Approximately 750 of these comments were received as 6 form letters, one of which (filed by approximately 120 commenters) advocated a national marketing area map comprised of 10 order areas covering all of the contiguous 48 states. The other form letters advocated the addition of currently-unregulated area to the Northeast area. Another 350 comments also addressed the desirability of adding unregulated areas to the proposed consolidated marketing areas (primarily the Northeast), with only about 55 of these being opposed to the inclusion of unregulated areas.

The comments specifically applicable to each of the consolidated marketing areas are described in the sections dealing with the individual consolidated areas.

In combination with consideration of the comments received, data similar to that gathered for October 1995 were compiled for October 1997 to determine whether the consolidated marketing areas delineated in the proposed rule continued to represent the most appropriate boundaries for the purpose of implementing the requirements of the 1996 Farm Bill.

The October 1997 data allowed a ''snapshot'' of the marketing patterns of fluid milk processors for that month. The regulatory status of distributing plants for October 1997 is known, and the regulatory status of each plant could be projected on the basis of the plant's receipts and dispositions, and where its milk was distributed. The information in the sections entitled ''Distributing Plants'' within the description of each marketing area are based on the October data, as are the lists of plants and pool plant status following the consolidation portion of this decision. It should be

understood that the regulatory status of any plant can change whenever its operations or areas of distribution change.

The result of the examination and analysis of the more recent data in combination with the comments on the proposed rule was to modify significantly from the proposed rule the marketing areas of the proposed Northeast and Western orders, and to make very minor modifications to the marketing areas of the proposed Southeast, Mideast, Upper Midwest and Central orders.

As in the case of data referring to the operations of less than three handlers or producers in the preliminary reports and proposed rule, some of the data used to determine the consolidated areas is restricted from use by the public because it refers to individual fluid milk distributing plants and the origins of producer milk supply for those plants. However, the basis for the marketing area boundaries is described as specifically as possible without divulging such proprietary information.

The same seven primary criteria as were used in the two preliminary reports and the proposed rule were used to determine which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation. The criteria are as follows:

1. Overlapping route disposition. The movement of packaged milk between Federal orders indicates that plants from more than one Federal order are in competition with each other for Class I sales. In addition, a degree of overlap that results in the regulatory status of plants shifting between orders creates disorderly conditions in changing price relationships between competing handlers and neighboring producers. This criterion is considered to be the most important.

2. Overlapping areas of milk supply. This criterion applies principally to areas in which major proportions of the milk supply are shared between more than one order. The competitive factors affecting the cost of a handler's milk supply are influenced by the location of the supply. The pooling of milk produced within the same procurement area under the same order facilitates the uniform pricing of producer milk. Consideration of the criterion of overlapping procurement areas does not mean that all areas having overlapping areas of milk procurement should be consolidated. An area that supplies a minor proportion of an adjoining area's milk supply with a minor proportion of its own total milk production while handlers located in the area are engaged in minimal competition with handlers located in the adjoining area likely does not have a strong enough association with the adjoining area to require consolidation.

For a number of the consolidated areas it would be very difficult, if not impossible, to find a boundary across which significant quantities of milk are not procured for other marketing areas. In such cases, analysis was done to determine where the minimal amount of route disposition overlap between areas occurred, and the criterion of overlapping route disposition generally was given greater weight than overlapping areas of milk supply. Some analysis also was done to determine whether milk pooled on adjacent markets reflects actual movements of milk between markets, or whether the variations in amounts pooled under a given order may indicate that some milk is pooled to take advantage of price differences rather than because it is needed for Class I use in the other market.

3. Number of handlers within a market. Formation of larger-size markets is a stabilizing factor. Shifts of milk and/or plants between markets becomes less of a disruptive factor in larger markets. Also, the existence of Federal order markets with handlers too few in number to allow meaningful statistics to be published without disclosing proprietary information should be avoided.

4. Natural boundaries. Natural boundaries and barriers such as mountains and deserts often inhibit the movement of milk between areas, and generally reflect a lack of population (limiting the range of the consumption area) and lack of milk production. Therefore, they have an effect on the placement of marketing area boundaries. In addition, for the purposes of market consolidation, large unregulated areas and political boundaries also are considered a type of natural barrier.

5. Cooperative association service areas. While not one of the first criteria used to determine marketing areas, cooperative membership often may be an indication of market association. Therefore, data concerning cooperative membership can provide additional support for combining certain marketing areas.

6. Features or regulatory provisions common to existing orders. Markets that already have similar regulatory provisions that recognize similar marketing conditions may have a head start on the consolidation process. With calculation of the basic formula price replacement on the basis of components, however, this criterion becomes less important. The consolidation of markets having different payment plans will be more dependent on whether the basic formula component pricing plan is appropriate for a given consolidated market, or whether it would be more appropriate to adopt a pricing plan using hundredweight pricing derived from component prices.

7. Milk utilization in common dairy products. Utilization of milk in similar manufactured products (cheese vs. butter-powder) was also considered to be an important criterion in determining how to consolidate the existing orders.

Comments on Consolidation Criteria

Most of the comments relative to order consolidation criteria were submitted prior to publication of the proposed rule. It was the overall opinion of the commenters that overlapping route disposition and milk procurement are the most important criteria to consider in the consolidation process. In addition, Class I use percentages and regulation on the basis of handler location were noted as important criteria to consider. To some extent, the consolidated marketing areas included in this final decision do combine markets with similar Class I utilization rates rather than markets that would result in Class I use percentages being more uniform between markets. This result occurs because adjoining markets, where most of the sales and procurement competition takes place between handlers regulated under different orders, tend to have similar utilization rates rather than because the criterion is one that should be used to determine appropriate consolidations. Also, Class I utilization rates are a function of how much milk is pooled on an order with a given amount of Class I use. Differences in rates, to the extent they result in differences in blend prices paid to producers, provide an incentive for milk to move from markets with lower Class I utilization percentages to markets with higher Class I use.

Regulation of processors on the basis of their location rather than their sales areas has largely been incorporated in the consolidated orders by a provision that would pool a handler under the order for the area in which the handler is located unless more than 50 percent of the handler's Class I route dispositions are distributed in another order area. This provision should help to assure that the order under which a distributing plant is pooled will not change from month to month, and that a plant operator is subject to the same provisions, such as producer pay prices, as are its primary competitors.

The consolidated orders also include provisions that lock plants processing primarily ultra-high temperature (UHT) or extended shelf-life milk into regulation under the order for the area in which the plant is located. Such plants often have widely dispersed route sales into a number of order areas, with sporadic deliveries to different areas. Without some type of lock-in provision, such a plant may be pooled in several different orders in as many months. At the same time, the plant's milk supply generally is procured from a given group of producers located in the same area as the UHT (or extended shelf-life) plant. Having the plant pooled under a succession of different orders with widely varying blend prices creates a disorderly condition for the producers involved.

On the basis of the distributing plant pooling standards included for all eleven orders in this final decision, there are three non UHT pool distributing plants that would have more sales in an order area other than the one in which they are regulated. Two of these plants are the Superbrand Dairy Products distributing plant in Greenville, South Carolina, and the Kroger Dairy distributing plant in Winchester, Kentucky, both located in the Appalachian order, but which likely will qualify for pooling under the Southeast and Mideast orders. In addition, the Hiland Dairy plant in Fayetteville, Arkansas, in the Southeast consolidated area, likely will qualify for pooling under the Central order. In cases in which these plants compete almost entirely for a producer milk supply in the area in which they are located, lock-in provisions are incorporated to assure that the plant is pooled where located for the purpose of competitive equity.

Some changes in regulatory status are expected to occur because of the addition of regulated area (in the Northeast), the consolidation of marketing areas, changes in pooling standards, and changes in the definitions of types of plants. The expected changes are based on data collected for October 1997 and may differ in some respects at the time the consolidated orders go into effect.

The regulatory status of three Vermont handlers is expected to change from partially regulated to fully regulated because a significant percentage of their sales is in areas that will be added to the Northeast consolidated marketing area, and a partially-regulated New York handler is expected to meet the pooling standards because of the consolidation of marketing areas. Two other currently partially regulated handlers, one in New York and one in Vermont, are expected to become fully regulated because the pooling provisions of the consolidated order will be more like those of all the other orders than is currently the case in the New York-New Jersey order. Two plants that currently are fully regulated on the basis of the ''grandfather'' clause of the New York-New Jersey order will become partially regulated when this provision ceases to exist.

In the consolidated Appalachian marketing area, two distributing plants, one currently unregulated and one partially regulated, would become fully regulated as a result of including the marketing area of the Tennessee Valley order, terminated in October 1997. These plants both were fully regulated under the Tennessee Valley order, and lost their regulatory status as a result of the termination.

A plant currently partially regulated under the Southeast order would become fully regulated as a result of ''locking in'' to regulation plants that distribute primarily UHT or extended shelf-life products. Another Southeast distributing plant, currently fully regulated, would become partially regulated because of failure to meet the consolidated order's pooling standards.

Two distributing plants that currently are partially regulated under the Chicago Regional order would become fully regulated under the consolidated Upper Midwest order because of a change in the definition of receipts that are used in the calculation of percentage of total receipts used in route disposition for the determination of pool status.

Three plants, one in each of the consolidated Upper Midwest, Central, and Pacific Northwest marketing areas, would change regulatory status as depicted in the attached list of distributing plants and regulatory status. These plants are distributing plants that are listed as being fully regulated in October 1997 and becoming either partially regulated or exempt under the consolidated orders. These plants, having small amounts of route dispositions, actually were pooled on the basis of their performance as supply plants or as part of supply plant units. It is unknown whether they will continue to qualify as pool supply plants, but will not meet the pool distributing plant standards of the consolidated orders.

In the Pacific Northwest, the Oregon and Washington State prison systems both operate fluid processing plants that have route distribution in commercial channels, competing with regulated handlers. These plants are not currently fully regulated. Under the consolidated order, one of the plants will be partially regulated only with respect to its commercial sales, and the other will be exempt on the basis of size.

Several comments advocated that all of a state's territory should be included in one Federal order to assure that all producers in a state are paid on an equitable basis, or to make it easier to maintain state statistical data. One of the primary reasons for Federal milk orders is that milk marketing occurs readily across state boundaries, making state milk marketing regulation more difficult to enforce. It is important that Federal milk marketing areas continue to recognize the free interstate movement of milk to and from milk plants. There are cases where natural boundaries such as mountains or rivers may result in part of a state having a closer marketing relationship with an adjoining state than with other areas of the same state.

Although the Revised Preliminary Report suggested that several currently non-Federally regulated areas be added to some consolidated marketing areas, the proposed rule omitted areas in which handlers are subject to minimum Class I pricing under State regulation unless the affected handlers or States requested inclusion. This final decision continues to omit such areas, and also omits currently-unregulated areas that comprise a significant distribution area for currently-unregulated handlers, some of which were proposed to be included in consolidated areas.

Considering the requirements of the 1996 Farm Bill, consolidation of the existing orders does not necessitate expansion of the consolidated orders into unregulated areas or areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed or equal those that would be established under Federal milk order regulation. Such regulation could have the effect of reducing returns to producers already included under State regulation without significantly affecting prices paid by handlers who compete with Federally-regulated handlers.

However, there are numerous counties and portions of counties located within and between Federal order marketing areas that have not been included in the defined order areas during the course of the more than 60 years the program has developed. In some cases, these small areas were left unregulated many years ago to maintain the unregulated status of a small handler. In others, these areas probably formed a ''buffer'' between separate

smaller order areas and were not incorporated when the smaller orders were merged. Some of these areas form ''buffer'' zones today between current order areas that will be consolidated in the course of this process. These areas should be included in the defined consolidated marketing areas if their inclusion would not have the effect of regulating any unregulated handlers who currently distribute milk in these areas. The issue of whether to regulate currently-unregulated areas is discussed in more detail with regard to the individual consolidated marketing areas in the sections of this decision dealing with those areas, especially the Northeast area.

The occurrence of partial counties in marketing area definitions should be minimized for the purpose of simplifying handlers' reporting burden. The continued existence of these unregulated areas, partially regulated counties, and counties split between marketing areas serves only to complicate the reporting of route dispositions outside the marketing area by regulated distributing plant handlers for the purpose of determining pool qualifications and increase the costs of administering the orders.

In order to avoid extending Federal regulation to handlers whose primary sales areas are outside current Federal order marketing areas and who currently are not subject to Federal order regulation, it has been determined that the appropriate in-area Class I disposition percentage portion of the pool distributing plant definition is 25 percent for all orders. Discussion of this provision is included in the section of this decision dealing with identical provisions. The 25-percent level of in-area sales will assure that currently-regulated handlers retain their pool status. At the same time, increasing from current levels the percentage of in-area sales required for pool status under the consolidated orders will allow State-regulated and most other non-Federally regulated handlers to operate at their current level of sales within Federal order areas without being subject to full Federal order regulation.

Cornell University Study

In addition to AMS' analysis of the receipt and distribution data in the development of this decision, researchers at Cornell University also provided input on potential consolidated marketing areas early in the Federal order reform process. This input was part of Cornell's partnership agreement with AMS to provide alternative analyses on Federal order reform issues. These researchers used an economic model (the Cornell U.S. Dairy Sector Simulator, or USDSS), to determine 10–14 optimal marketing areas. Cornell's first options for 10–14 marketing areas were presented at an October 1996 invitational workshop for dairy economists and policy analysts held in Atlanta, Georgia. Based on USDSS model results, these options would result in minimum cost flows of milk using the known concentrations of milk production and population, without considering the location of milk plants. The marketing area maps that were circulated using these first results were those referenced by interested persons who cited the Cornell results in their comments on the Preliminary Reports on Order Consolidation and on the proposed rule.

A second set of options was presented by Cornell researchers in spring 1997. These options were generated with a further-developed USDSS model. In updating the model, the researchers enhanced the inputs to its model as a means of better reflecting the actual structure of the national market for fluid milk products. These model updates allowed for determination of the minimum cost flows of: milk, intermediate and final products from producers to plants; from plants to plants; and from plants to consumers on the basis of the locations of milk supplies, dairy product processing plants, and consumers. The enhanced model is intended to provide for geographic market definition on the basis of a resulting set of optimal, efficient simulated flows of milk and dairy products between locations.

Although the USDSS model considers important factors such as milk supply and demand locations and transportation constraints in determining the optimal consolidated marketing areas, it aggregates processing locations, sometimes at locations that are not representative of where substantial volumes of milk are processed. In addition, the model does not consider several important factors such as large areas that are not Federally regulated and certain economic factors which influence the movement of milk.

AMS is unaware of any other analyses performed to determine or suggest consolidated marketing areas.

As noted before, AMS' analysis focused initially on distributing plant receipts and distribution information for October 1995, updated as needed for further analysis during development of the proposed rule. Equivalent data was gathered for October 1997 to assure that the consolidated marketing areas continue to represent actual marketing relationships between the current order areas, with more current information used as needed for further analysis. The data gathered by the Dairy Division from Federal Milk Market Administrators reflects actual movements of milk, both from production areas to processing plants, and from processing plants to consumption areas. This final decision considers this data, the seven criteria described fully above, and information provided by the USDSS model analysis.

The consolidated marketing area options presented by Cornell are not adopted because the USDSS model does not adequately reflect issues or factors that strongly affect which current marketing areas are most closely related. For this reason, this decision is based on data reflecting actual distribution and procurement by fluid milk processing plants.

Marketing Areas

Following are maps of the current marketing areas and the 11 consolidated marketing areas, followed by brief descriptions of the marketing areas (with those modified from the Proposed Rule, and the modifications, marked by*) and the major reasons for consolidation. A more detailed description of each consolidated order follows this summary.

At the end of the Order Consolidation portion of this decision is appended a list of distributing plants associated with each consolidated marketing area, with each plant's expected regulatory status, determined on the basis of data describing the plants' operations during October 1997.

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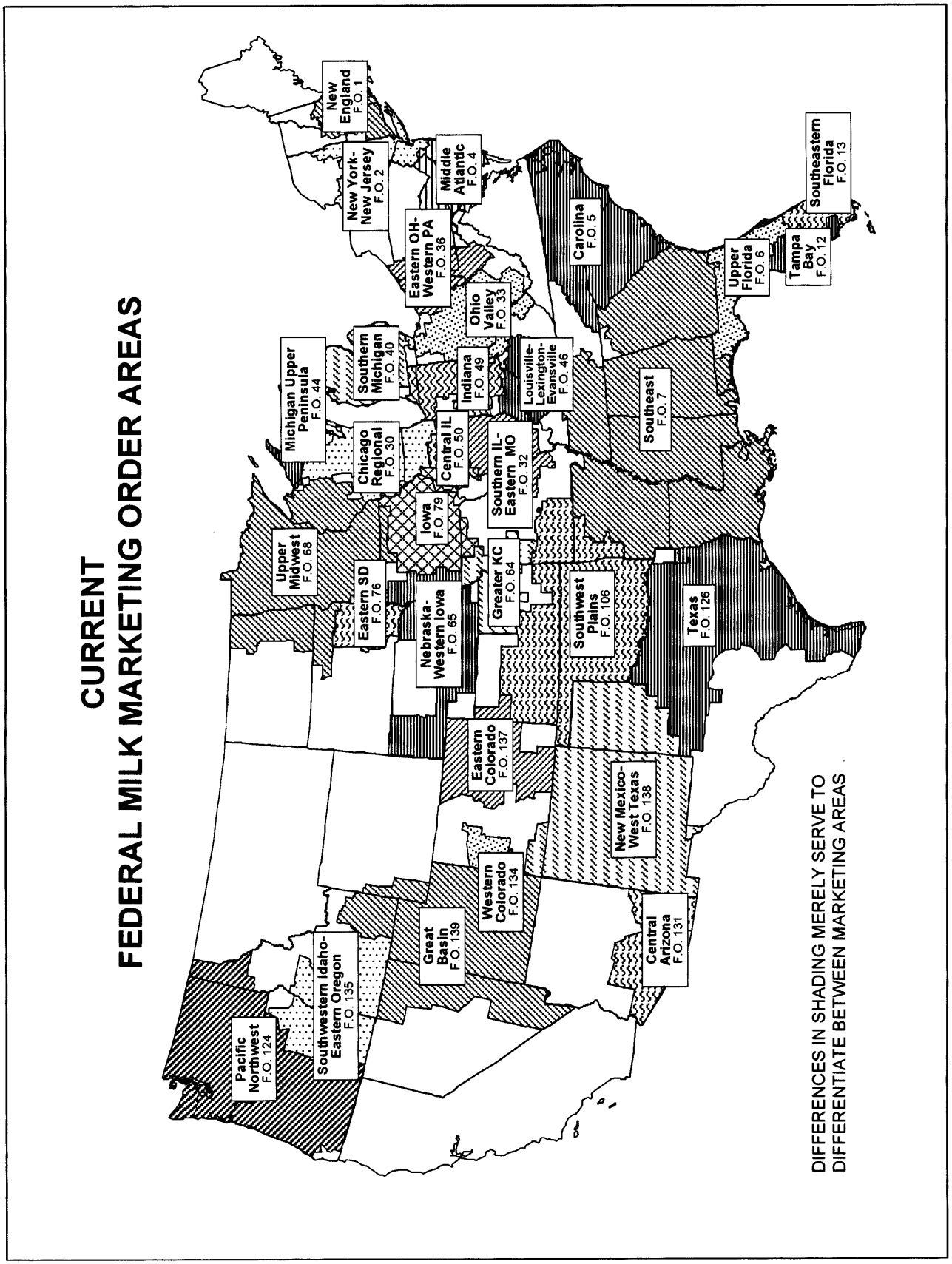
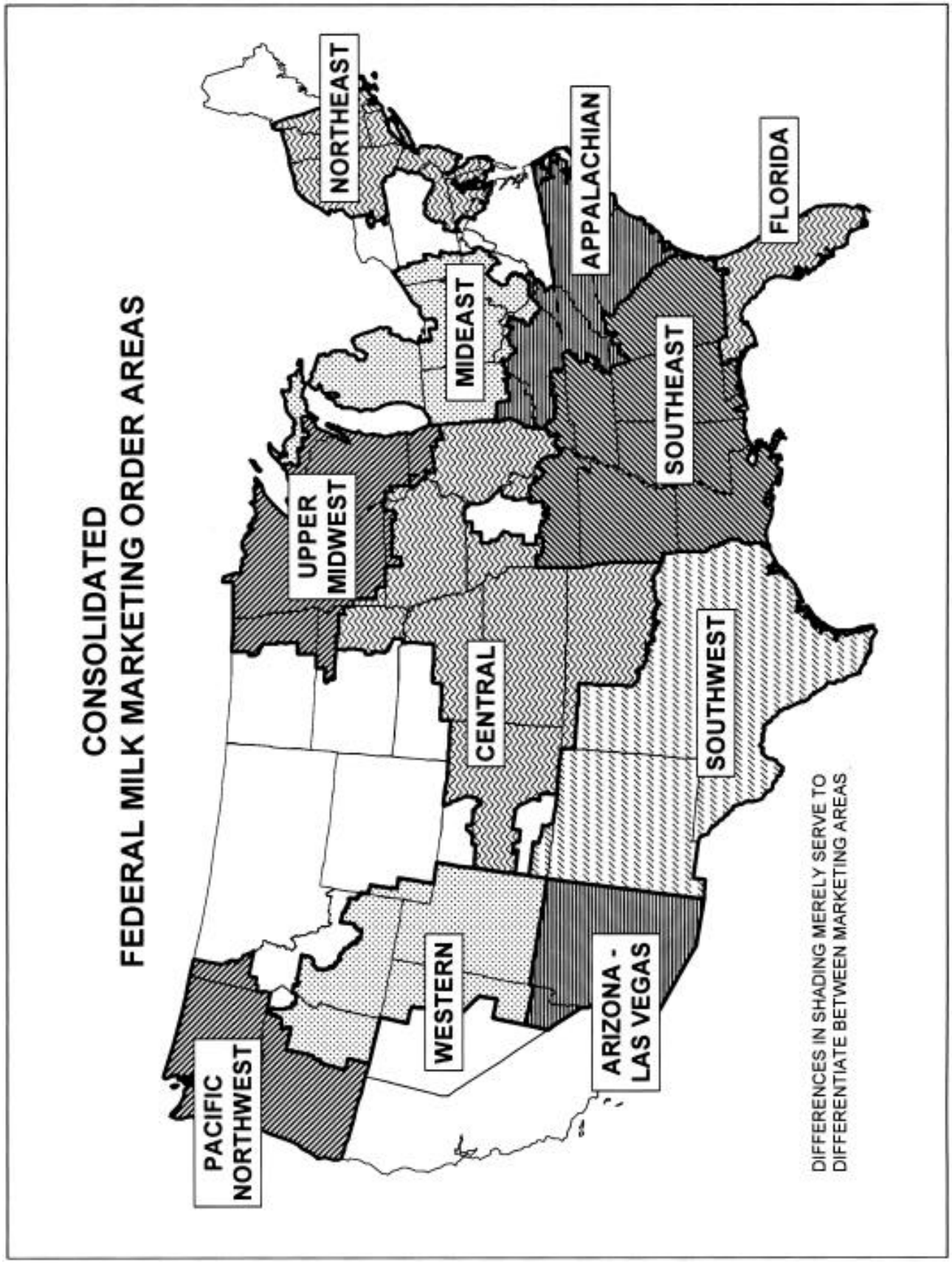

CURRENT
FEDERAL MILK MARKETING ORDER AREAS
New England F.O. 1
New York-New Jersey F.O. 2
Middle Atlantic F.O. 4
Carolina F.O. 5
Upper Florida F.O. 6
Tampa Bay F.O. 12
Southeastern Florida F.O. 13
Eastern OH-Western PA F.O. 36
Ohio Valley F.O. 33
Louisville-Lexington-Evansville F.O. 46
Southeast F.O. 7
Southern Michigan F.O. 40
Indiana F.O. 49
Michigan Upper Peninsula F.O. 44
Chicago Regional F.O. 30
Central IL F.O. 50
Southern IL-Eastern MO F.O. 32
Iowa F.O. 79
Upper Midwest F.O. 68
Eastern SD F.O. 76
Greater KC F.O. 64
Nebraska-Western Iowa F.O. 65
Southwest Plains F.O. 106
Texas F.O. 126
Eastern Colorado F.O. 137
New Mexico-West Texas F.O. 138
Western Colorado F.O. 134
Great Basin F.O. 139
Central Arizona F.O. 131
Southwestern Idaho-Eastern Oregon F.O. 135
Pacific Northwest F.O. 124
DIFFERENCES IN SHADING MERELY SERVE TO DIFFERENTIATE BETWEEN MARKETING AREAS



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Eleven Consolidated Marketing Areas

*1. NORTHEAST—current marketing areas of the New England, New York-New Jersey and Middle Atlantic Federal milk orders, with the addition of: the contiguous unregulated areas of New Hampshire, northern New York and Vermont; and the non-Federally regulated portions of Massachusetts. *The Western New York State order area (ten entire and 5 partial western New York counties) proposed to be included in the expanded Northeast order area has been omitted. The handlers who would be added to those currently fully regulated under the three separate orders either have a sufficient percentage of their route disposition within the consolidated marketing area to meet the pooling requirements or are located in the area to be added.

Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. An important measure of association is evidenced by industry efforts to study and pursue consolidation of the three Federal orders prior to the 1996 Farm Bill.

2. APPALACHIAN—Current marketing areas of the Carolina and Louisville-Lexington-Evansville (minus Logan County, Kentucky) Federal milk orders plus the marketing area of the former Tennessee Valley order, with the addition of 21 currently-unregulated counties in Indiana and Kentucky.

Overlapping sales and procurement areas between these marketing areas are major factors for this consolidation.

3. FLORIDA—current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

*4. SOUTHEAST—current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area; plus 11 northwest Arkansas counties and 22 entire Missouri counties that currently are part of the Southwest Plains marketing area; plus 6 Missouri counties that currently are part of the Southern Illinois-Eastern Missouri marketing area; plus 16 currently unregulated southeast Missouri counties (including 4 that were part of the former Paducah marketing area); plus 20 currently-unregulated Kentucky counties (including 5 from the former Paducah marketing area).

*A partial Missouri county that has been part of the Southwest Plains marketing area will become completely unregulated to minimize the reporting complications caused by partially regulated counties.

Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and these counties.

*5. MIDEAST—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and most currently-unregulated counties in Michigan, Indiana and Ohio. *One partial and 3 entire counties in north central Ohio are left unregulated, since they represent the distribution area of a currently-partially regulated distributing plant (Toft Dairy in Sandusky, Ohio).

Major criteria for this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas to be consolidated. With the consolidation, most route disposition by handlers located within the Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

*6. UPPER MIDWEST—current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin. *The Iowa Federal order marketing area portion of one Illinois county, in which Chicago Regional handlers have the preponderance of sales, is added to the consolidated Upper Midwest marketing area, and the Chicago Regional portion of another Illinois county, in which Iowa order handlers have the preponderance of sales, is removed and added to the consolidated Central area. These changes will reduce overlapping route disposition between the two consolidated orders and reduce the incidence of partial counties in marketing areas.

Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders and overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order. A number of the same cooperative associations market member milk throughout the consolidated area.

7. CENTRAL—current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, Eastern Colorado, Nebraska-Western Iowa, Eastern South Dakota, Iowa (less the portion of an Illinois county that will become part of the consolidated Upper Midwest area) and *Western Colorado Federal milk orders, * plus the portion of an Illinois county currently in the Chicago Regional Federal order area, minus 11 northwest Arkansas counties and 1 partial and 22 entire Missouri counties that are part of the current Southwest Plains marketing area, minus 6 Missouri counties that are part of the current Southern Illinois-Eastern Missouri marketing area, plus 54 currently-unregulated counties in Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado, plus 8 counties in central Missouri *(six fewer than in the proposed rule) that are not considered to be part of the distribution area of an unregulated handler in central Missouri, *plus 7 currently unregulated Colorado counties located between the current Western and Eastern Colorado order areas.

This configuration would leave 31 unregulated counties in central Missouri that are intended to delineate the distribution area of Central Dairy at Jefferson City, Missouri, which has limited distribution in Federal order territory.

Major criteria on which this consolidation is based include overlapping route disposition and procurement between the current orders. The consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, many of the producers in these areas share membership in several common cooperatives. The Western Colorado area has become more closely associated with the Eastern Colorado area than with the Great Basin area since issuance of the proposed rule.

8. SOUTHWEST—current marketing areas of Texas and New Mexico-West Texas Federal milk orders, with the addition of two currently-unregulated northeast Texas counties and 47 currently-unregulated counties in southwest Texas.

Major criteria supporting this consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for both orders. Addition of the currently-unregulated Texas counties will result in the regulation of no additional handlers, and will reduce handlers' recordkeeping and reporting burden and the market administrator's administrative costs.

9. ARIZONA-LAS VEGAS—current marketing area of Central Arizona, plus the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

The major criterion on which the consolidation is based is sales overlap between the sole Las Vegas, Nevada, handler and handlers regulated under the Central Arizona order in both Clark County, Nevada, and unregulated portions of northern Arizona. The Grand Canyon and sparsely populated areas in the northwest part of Arizona, and the sparsely populated desert region of eastern Arizona constitute natural barriers between this and adjacent marketing areas. In addition, the most significant relationship between this area and any other is represented by the substantial volumes of bulk and packaged milk exchanged between the Arizona-Las Vegas area and Southern California.

*10. WESTERN—current marketing areas of the Southwestern Idaho-Eastern Oregon and Great Basin Federal milk orders, minus Clark County, Nevada. *The Western Colorado order area, proposed to be included in the Western order area, is instead included in the consolidated Central order. The major criteria on which the consolidation is based include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also have similar multiple component pricing plans and most of the milk used in nonfluid products under both orders is used in cheese.

Collection of detailed data for individual handlers indicates that the strength of earlier relationships between the former Great Basin and Lake Mead orders that justified their 1988 merger have dwindled significantly, with the Las Vegas area now more closely related to a combination of southern California and Central Arizona handlers.

11. PACIFIC NORTHWEST—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

TABLE 1.—MARKET INFORMATION: POPULATION, UTILIZATION, PRODUCER MILK AND WEIGHTED AVERAGE UTILIZATION VALUE (WAUV) IN CONSOLIDATED MARKETING AREAS

Market	Population [1] (millions)	Class I utilization [2] (percent)	Producer milk [2] (1000 lbs.)	WAUV [2 3] (per cwt)
Northeast	49.0	48.6	1,962,335	$13.97
Appalachian	17.3	85.0	410,372	13.35
Florida	14.1	90.6	217,952	15.69
Southeast	26.9	85.6	482,499	13.60
Mideast	31.0	58.9	1,040,112	13.42
Upper Midwest	18.5	24.1	1,597,232	12.94
Central	21.5	50.1	868,443	13.29
Southwest	21.3	53.4	649,872	13.97
Arizona-Las Vegas	5.7	46.3	195,943	13.84
Western	3.2	32.5	304,129	13.14
Pacific Northwest	9.0	35.6	539,987	13.33
Total	217.5	N/A	7,756,390	N/A

[1] Based on July 1, 1997 estimates.
[2] Based on October 1997 information, for plants which would be fully regulated under assumptions used in this decision.
[3] Not a blend price—shown solely for the purpose of showing impact of consolidation on utilization.

TABLE 2.—MARKET INFORMATION: NUMBER OF PLANTS IN CONSOLIDATED MARKETING AREAS

Market	Distributing plants [1]			Manufacturing and supply plants [3]
	Fully regulated (FR)	Exempt [2]	FR small businesses	
Northeast	64	9	31	95
Appalachian	25	3	4	13
Florida	12	1	2	4
Southeast	36	1	3	37
Mideast	51	4	27	59
Upper Midwest	27	3	13	301
Central	35	3	7	84
Southwest	21	2	5	17
Arizona-Las Vegas	5	1	2	3
Western	11	1	5	18
Pacific Northwest	19	4	12	27

TABLE 2.—MARKET INFORMATION: NUMBER OF PLANTS IN CONSOLIDATED MARKETING AREAS—Continued

Market	Distributing plants [1]			Manufacturing and supply plants [3]
	Fully regulated (FR)	Exempt [2]	FR small businesses	
Total	306	32	111	669

[1] Based on October 1997 information. Excludes: (1) out-of-business plants through December 1998; and (2) new plants since October 1997.
[2] Exempt based on size (less than 150,000 lbs. route distribution per month).
[3] Based on May 1997 information.

Descriptions of Consolidated Marketing Areas

Each of the consolidated order areas is described in the text following this introduction. The criteria which were used to determine which areas should be consolidated are explained. For each consolidated area, the following information is included:

Geography. The political units (states, counties, and portions of counties) included in each area, the topography, and the climatic conditions are described for the purpose of delineating the territory to be incorporated in each consolidated marketing area and describing its characteristics pertaining to milk production and consumption. This information was derived principally from Microsoft® Encarta® 96 Encyclopedia, and augmented by several U.S. atlases.

Population. The total population of each area and its distribution within the area is included for the purpose of identifying where milk is consumed. July 1, 1997, population estimates were obtained from ''CO–97–1 Estimates of the Population of Counties,'' Population Estimates Program, Population Division of the U.S. Bureau of the Census.

Metropolitan Statistical Area (MSA) information is provided by the United States Office of Management and Budget (OMB), which defines metropolitan areas according to published standards that are applied to Census Bureau data. To be described as an MSA, an area (one or more counties) must include at least one city with 50,000 or more inhabitants, or a Census Bureau-defined urbanized area (of at least 50,000 inhabitants) and a total metropolitan population of at least 100,000 (75,000 in New England). Areas with more than 1 million population may be described as ''consolidated metropolitan statistical areas'' (CMSAs) made up of component parts designated as primary metropolitan statistical areas (PMSAs). For purposes of the marketing area descriptions in this decision, the term ''MSA'' also includes CMSAs and PMSAs.

Per capita consumption. Available data pertaining to per capita consumption is discussed to help describe how much milk is needed to supply the fluid needs of the population of each marketing area. Per capita consumption numbers were estimated by state using data from a report on ''Per Capita Sales of Fluid Milk Products in Federal Order Markets,'' published in the December 1992 issue of Federal Milk Order Market Statistics, #391, issued May 1993. This data was the most recent available.

Production. A description of the amount and sources of milk production for the market is included for the purpose of identifying the supply area for each consolidated marketing area. Production data by state and county for each Federal milk order was compiled from information collected by the offices administering the current Federal milk orders (market administrators' offices). For most of the consolidated marketing areas, production data has been updated to October 1997. For several of the consolidated areas, however, October 1997 data is difficult to compile and, when compared with previously published statistics, may yield confidential information. For these areas, the data cited in the proposed rule has been used to describe the sources of milk for the consolidated market.

Distributing plants. For each marketing area the number and types of distributing plants expected to be associated with each marketing area are included, with the locations of plants by population centers, to identify where milk must be delivered. This information was collected by market administrators' offices. The expected regulatory status was determined on the basis of each plant's receipts and route distribution of fluid milk during October 1997. Changes in plant operations or distribution patterns could change the expected status.

Utilization. The utilization percentages of the current individual orders and the effect of consolidation on the consolidated orders are described for each marketing area, with an estimate of the effect of consolidation on each current individual order's blend price. The current utilization data is published each month for each Federal milk order market. Pool data was used to calculate the effects of consolidation on utilization.

Other plants. The presence of manufacturing and supply plants in and near the consolidated order areas, and the products processed at these plants, are described for each consolidated area. This information was collected by market administrators' offices for May 1997, and has been changed from the proposed rule only where changes from the proposed marketing areas have occurred.

Cooperative Associations. The number of cooperative associations pooling member milk under each of the current individual orders included in each consolidated area, and the number that pool milk in more than one of the areas is identified. This information was obtained from market administrators' offices, updated to December 1997 from the proposed rule. For purposes of the consolidation discussion, the four cooperative associations that combined to create Dairy Farmers of America (DFA) are considered to be a single organization.

Criteria for Consolidation. The extent to which the criteria used in identifying markets to be consolidated are supported by the marketing conditions present in each of the consolidated areas is discussed.

Discussion of comments and alternatives. Comments filed in response to the consolidation section of the proposed rule and alternatives considered are summarized and discussed for each consolidated area.

Northeast

The consolidated Northeast marketing area is comprised of the current New England, New York-New Jersey, and Middle Atlantic Federal milk order marketing areas (Orders 1, 2, and 4), with currently-unregulated areas in northern New York, Vermont and New Hampshire added. The entire areas of the States of Connecticut (8 counties), Delaware (3 counties), Massachusetts (14 counties), New Hampshire (10 counties), New Jersey (21 counties),

Rhode Island (5 counties), and Vermont (14 counties) are contained within the consolidated Northeast order area. In addition, the District of Columbia, 21 counties and the City of Baltimore in Maryland, 41 complete and 3 partial counties and the 5 boroughs of New York City in New York, the 15 Pennsylvania counties currently included in the Middle Atlantic marketing area, and 4 counties and 5 cities in Virginia are included in the consolidated order. There are 156 complete and 3 partial counties and 8 cities, including the District of Columbia, in the consolidated Northeast marketing area.

The Western New York State order area, proposed to be included in the consolidated Northeast area, is not included at the request of the business entity that would be most affected by its inclusion because the currently-unregulated portions of Pennsylvania are not included.

Geography

The Northeast marketing area extends from the Canadian border on the north, south to northern Virginia, eastern Maryland and Delaware, with its eastern edge along the western border of Maine at the northern end of the marketing area, and along the Atlantic Ocean for the remainder. The total northeast-southwest extent of the marketing area is approximately 600 miles. The marketing area extends westward to Lake Ontario in New York State (about 350 miles east to west), goes only as far west as the northern part of New Jersey (about 60 miles), and expands westward again across the eastern half of southern Pennsylvania, taking in a small part of northeast Virginia, eastern Maryland, and Delaware (about 230 miles east to west). There is a large State-regulated area in Pennsylvania just to the west of the Northeast marketing area; and most of the State of Virginia to the south of the marketing area also is regulated under a State order. The consolidated Northeast marketing area is contiguous to no other consolidated marketing areas, but parts of it, in south central New York State and south central Pennsylvania, are very close to the consolidated Mideast area.

The northern and northwestern parts of the Northeast area are large areas of coniferous forests that are somewhat mountainous. To the south and southeast of the forested areas are areas where dairy farming predominates as the primary type of agriculture. In fact, for 4 of the 10 states that are located in the Northeast marketing area (New Hampshire, New York, Pennsylvania and Vermont) dairy products were the number 1 agricultural commodity in terms of cash receipts during 1996. Principally along the Atlantic coastline is a flatter area where other agricultural activities, including greenhouse and nursery, fruit, truck and mixed farming, take place. A near-continuous strip along the east coast of the area, from northeast Massachusetts southwest to the Baltimore area, is a major industrial area and is heavily populated.

Population

According to July 1, 1997, population estimates, the total population in the consolidated Northeast marketing area is 49 million. The area is very densely populated, especially along a coastal strip extending from Boston, Massachusetts, in the northeast to Washington, D.C., in the southwest. In this consolidated marketing area of approximately 160 counties, 106 are included within Metropolitan Statistical Areas (MSAs). The 20 Metropolitan Statistical Areas in the consolidated Northeast marketing area account for 93.7 percent of the total market area population.

Almost sixty percent of the marketing area population is located in 6 interconnected MSAs in 48 counties, extending from central New Jersey to southern New Hampshire. The six MSAs are: Springfield, Massachusetts; Boston-Worcester-Lawrence, Massachusetts/New Hampshire/Maine/Connecticut; Providence-Fall River-Warwick, Rhode Island/Massachusetts; New London-Norwich, Connecticut/Rhode Island; Hartford, Connecticut; and New York-Northern New Jersey-Long Island, New York/New Jersey/Connecticut/Pennsylvania. The population in this northeastern portion of the marketing area is concentrated most heavily at its northern and southern ends—the New York City area has a population of approximately 20 million, and the Boston area's population is approximately 5.5 million. Two of the other MSAs, Hartford and Providence, each have over 1 million population. Although each of these six MSAs is described as a separate area in the population data, many of the counties involved are divided between separate MSAs.

Just southwest of the New York City MSA is the Philadelphia-Wilmington-Atlantic City, Pennsylvania/New Jersey/Delaware/Maryland MSA, with a population of 6 million. Some counties of these two MSAs are adjacent. Southwest of the Philadelphia MSA and separated from it by only one county is the Washington, DC/Baltimore, Maryland/northern Virginia MSA, with a population in the consolidated marketing area of 6.8 million.

Of the 12 other MSAs in the consolidated marketing area, 6 are located in New York State, with an average population of nearly 400,000 each. Two are located in Pennsylvania, with populations of .6 and .45 million. One MSA in Vermont, 1 in Delaware, and 2 in Massachusetts have average populations of 163,000.

Fluid Per Capita Consumption

Fluid per capita consumption estimates vary within the Northeast from 16.7 pounds per month in the more southern parts of the region to 20 pounds per month in New England. These rates would result in a weighted average of 18 pounds per month, and an estimated total fluid milk consumption rate of 882 million pounds per month for the Northeast marketing area. Approximately 752 million pounds of this fluid milk consumption would be required along the heavily-populated coastal area extending from northeast Massachusetts southwest through Washington, D.C. and northern Virginia. Handlers who would have been fully regulated under the consolidated Northeast order during October 1997 distributed 828.1 million pounds within the consolidated marketing area. October 1997 sales within the marketing area by handlers that would be regulated by other orders totaled 6.2 million pounds, and sales by handlers who would have been partially regulated were 18.9 million pounds. Sales in the marketing area by exempt and government plants, and by producer-handlers totaled 6.6 million pounds.

Milk Production

In October 1997, nearly 19,000 producers from 13 states pooled 1.9 billion pounds of milk on the three orders comprising the consolidated Northeast order. With the addition of several currently-unregulated handlers, it is probable that approximately 2 billion pounds of milk per month will be pooled under the Northeast order.

Eleven of the 13 states supplying milk to the three Federal order pools are at least partly in the marketing area, and 84 percent of the producer milk pooled under the three orders in October 1997 came from just 3 states—New York (41.5 percent), Pennsylvania (32.2 percent), and Vermont (10.3 percent). Over 10 million pounds of milk was produced in each of fifty-one counties: 1 county in northeast Connecticut, 3 in the most northwestern of the Maryland portion of the marketing area, 30 spread over most of New York, 1 on the western edge of

northern Virginia, and 16 in southeast to south central Pennsylvania and in the eastern part of the northern tier of Pennsylvania counties, with an additional Pennsylvania county, Lancaster, accounting for over 150 million pounds of milk. Over seventy percent of the markets' total producer milk was produced within the consolidated marketing area.

Less than one-third of the milk production for the consolidated market was produced within 100 miles of the heavily populated coastal corridor. Although the Northeast area contains two out of the top five milk-producing states in the U.S. (New York and Pennsylvania), the population of the marketing area is nearly 20 million more than the next most-populated consolidated area (the Mideast area, with 31 million people). The Northeast, therefore, is a very significant milk production area with a very high demand for fluid milk and dairy products.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards at 25 percent of route dispositions as in-area sales, and updated for known plant closures through December 1998, 141 distributing plants would be expected to be associated with the Northeast marketing area. On the basis of data collected for October 1997, the plants associated would include 64 fully regulated distributing plants (58 currently fully regulated, 5 currently partially regulated, and 1 currently unregulated), 15 partially regulated (2 currently fully regulated and 13 currently partially regulated). Nine exempt plants having less than 150,000 pounds of total route disposition per month (3 currently fully regulated, 2 currently partially regulated, 2 currently exempt based on size, and 2 currently unregulated) and 47 producer-handlers (45 currently producer-handlers, 1 currently partially regulated, and 1 currently unregulated) would have been associated with the market during October 1997. Three handlers who currently are exempt based on institutional status would continue to be exempt on the same basis, and 3 handlers located in the Western New York order area who would have been fully regulated under the proposed rule would continue to be unregulated under any Federal order.

Since October 1997, 14 distributing plants (3 in New York, 2 in each of the States of Massachusetts, Maryland, New Jersey, Pennsylvania and Vermont, and 1 in Connecticut), have gone out of business.

Less than half (60) of the Northeast distributing plants which were identified as being in business as of December 1998 were located in the 6 Northeast MSAs that have over a million people each. This number includes 31 of the pool distributing plants. Under the consolidated order, it is anticipated that there would be 5 pool distributing plants in the Boston-Worcester-Lawrence area, 6 in the Philadelphia-Wilmington-Atlantic City area, and 11 in the New York-Northern New Jersey-Long Island area. The Hartford, Connecticut, area would have 2 pool distributing plants, Providence-Fall River-Warwick would have 3, and the Washington-Baltimore area would have 4 pool distributing plants.

Of the remaining 81 distributing plants, 14 pool distributing plants were located in other MSAs as follows: 8 in New York; 4 in Pennsylvania; and 2 in Massachusetts. Sixty-seven distributing plants, including 19 pool distributing plants, were not located in MSAs.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Northeast order, the Class I utilization percentages for the New England, New York-New Jersey, and Middle Atlantic markets were 52, 45, and 53 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Northeast order, the potential impact of this decision on producers who supply the current market areas is estimated to be: New England, a 9-cent per cwt decrease (from $14.09 to $14.00); New York-New Jersey, a 8-cent per cwt increase (from $13.91 to $13.99); and Middle Atlantic, a 10-cent per cwt decrease (from $14.00 to $13.90). The weighted average use value for the consolidated Northeast order market is estimated to be $13.97 per cwt. For October 1997, combined Class I utilization for Orders 1, 2 and 4 was 47.7 percent based on 917.3 million pounds of producer milk used in Class I out of 1.922 billion total producer milk pounds.

The Northeast area is one of two consolidated marketing areas that would have a significantly higher-than-average percentage of its milk used in Class II. Currently, all three of the orders have Class II utilization between 15 and 25 percent. When the markets are combined the average for the consolidated market will be approximately 18 percent.

Other Plants

Located within the consolidated Northeast marketing area during May 1997 were 95 supply or manufacturing plants: 13 in Vermont (4 in the Burlington area), 1 in New Hampshire and 10 in Massachusetts (all in the Boston-Worcester-Lawrence area), 1 in Rhode Island (in the Providence-Fall River-Warwick area), 7 in Connecticut (3 in the Hartford area and 4 in the New York-Northern New Jersey-Long Island area), 12 in New Jersey (all in the New York-Northern New Jersey-Long Island area), 2 in Delaware (one in the Philadelphia-Wilmington-Atlantic City area), 7 in Maryland (four in the Washington-Baltimore area), 13 in Pennsylvania (5 in the Philadelphia-Wilmington-Atlantic City area), and 29 in New York (9 in the New York-Northern New Jersey-Long Island area).

Fifteen of the 95 plants are pool plants. Of these pool plants, 7 are manufacturing plants—5 manufacture primarily powder, 1 manufactures primarily cheese and 1 manufactures primarily other products. There are 8 pool supply plants—1 has no primary product, but ships only to distributing plants; 5 are supply plants that manufacture primarily Class II products, and 2 supply plants manufacture primarily cheese. Of the remaining 80 nonpool plants in the Northeast marketing area, 73 are manufacturing plants—37 manufacture primarily Class II products, 1 manufactures primarily butter, 33 manufacture primarily cheese and 2 manufacture primarily other products. Seven of the remaining nonpool plants are supply plants—2 are supply plants that manufacture primarily Class II products and 5 are supply plants that manufacture primarily cheese.

There are also six supply or manufacturing plants in the unregulated area of New York—one in the unregulated county of Chautauqua, one in the unregulated portion of Cattaraugus County, two in the unregulated portion of Allegany County, and two in the unregulated portion of Steuben County. Two are pool supply plants—one manufactures primarily Class II products and the other manufactures primarily cheese. The remaining four are nonpool manufacturing plants—three manufacture primarily cheese and one manufactures primarily Class II products.

Cooperative Associations

During December 1997, 76 cooperative associations pooled their members' milk on the three Northeast orders. Three of the cooperatives pooled milk on all three orders, 3 pooled milk on both the New England and New York-New Jersey orders, and 3 others pooled milk on both the New York-New Jersey and Middle Atlantic orders. The 9 cooperative associations that pooled milk on more than one of the Northeast orders represented 72.6 percent of cooperative milk pooled under the 3 orders and 55 percent of the total milk. Seventy-six percent of the milk pooled in the Northeast is cooperative association milk, with 80 percent of Federal Order 1 milk, 68.4 percent of Federal Order 2 milk, and 87 percent of Federal Order 4 milk pooled by cooperatives.

The 5 cooperatives that market milk only under Order 1 account for 26.7 percent of the milk marketed under that order by cooperative associations, and 21.3 percent of total milk marketed under Order 1. In Order 2, only 40.4 percent of cooperative association milk is marketed by the 59 co-ops that market milk only under Order 2. Milk marketed by these cooperatives represents 27.6 percent of the total milk pooled for December 1997. Three cooperative associations that marketed milk only on the Order 4 portion of the Northeast order marketed 8.2 percent of the milk marketed by cooperatives under this order. This amount of milk represented 7.2 percent of total milk pooled under Order 4 in December 1997.

Criteria for Consolidation

The current New England, New York-New Jersey, and Middle Atlantic Federal milk order marketing areas (Orders 1, 2, and 4) should be consolidated because of the interrelationship between Orders 1 and 2 and between Orders 2 and 4 regarding route disposition and milk supply. Eighty percent of fluid milk disposition by handlers who would be fully regulated under the consolidated order is distributed within the consolidated marketing area. Fully regulated handlers account for 96 percent of the fluid milk products distributed within the consolidated marketing area. The utilization of the three markets is similar, and several cooperative associations market their members' milk in all three markets. The three markets are surrounded by State-regulated and unregulated areas to the west and south, the Atlantic ocean to the east, and Canada to the north. The adjoining Maine State milk order also serves as somewhat of a barrier to milk marketing in the northeast by limiting the association of non-Maine milk with the Maine pool.

The merger of these markets has been previously proposed by interested parties. A committee comprised chiefly of Northeast region cooperatives was formed over three years ago to study a merger of the three Federal orders. In support of a Northeast consolidation, the committee and other interested parties, including handlers and regulatory agencies, have noted: overlapping sales and procurement areas; a trend toward consolidation of cooperative processors and handlers in the region (leaving the remaining handlers with larger distributing areas and volumes); and regulation of plants by an order in which they are not located. The proponents of consolidation have indicated that consolidation would tend to solve some of the presently existing inequities and would lead to greater efficiency for handlers and order administration.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the order areas included in the Northeast marketing area that were considered included the addition of all currently unregulated and State-regulated area adjoining the Order 1, 2 and 4 marketing areas. These considerations included Pennsylvania Milk Marketing Board (PMMB) Areas 2, 3, and 6, some or all of the non-Federally regulated part of the State of Virginia, the unregulated areas of West Virginia and Maryland, the Western New York State order area and northern New York, northern Vermont and New Hampshire, pockets of unregulated area in Massachusetts, and the State of Maine. The proposed rule would have included in the consolidated Northeast marketing area the unregulated areas of Vermont, New Hampshire, Massachusetts, northern New York, and the Western New York State order area.

Nearly 1,150 comments that dealt to some extent with the consolidation of the Northeast order area were received in response to the proposed rule. Approximately 125 of these comments favored adoption of a national marketing area map that would include all U.S. territory in the 48 contiguous states in one of ten Federal order areas. Over 950 comments favored the expansion of the Northeast area into all of Pennsylvania, with more than 600 of these comments also favoring expansion into some combination of the unregulated areas of New York, Maryland, West Virginia, Vermont, Massachusetts, New Hampshire, and Maine. More than 50 commenters urged the continued omission of Pennsylvania Milk Marketing Board Areas 2, 3, and 6 from any of the consolidated Federal order areas.

Most of the comments supporting expansion of the Northeast consolidated marketing area into non-federally regulated areas, especially Pennsylvania, argued that handlers in the non-federally regulated areas compete for milk supplies in the same milksheds and for fluid milk sales in the same markets as Federally-regulated handlers, with the surrounding federal order pool(s) carrying the necessary reserve milk supplies for the Class I sales distributed by non-regulated handlers. In addition, the comments argued that dairy farmers whose milk is priced in individual handler pools at primarily-fluid handlers under PMMB regulation have a competitive advantage over neighboring producers whose milk is included in marketwide pools that blend the cost of balancing milk supplies for fluid use with returns from the fluid market.

Nearly 60 comments, many from Pennsylvania dairy farmers, opposed expansion of the consolidated Northeast order area into Pennsylvania. Comments stated that the PMMB individual handler pools result in greater returns to producers, and producer returns would decline if handlers are required to pay the additional fluid value into the marketwide pool to subsidize cheese/powder plants.

As stated in the introduction to the consolidation discussion, consolidation of the existing orders does not necessitate expansion of the consolidated orders into currently-unregulated areas, especially if such expansion would result in the regulation of currently-unregulated handlers. Handlers located in PMMB areas 2, 3, and 6 are regulated under the State of Pennsylvania if they do not have enough sales in any Federal order area to meet an order's pooling standards. These PMMB handlers are subject to minimum Class I pricing, sometimes at price levels that exceed those that would be established under Federal milk order regulation. When such plants do meet Federal order pooling standards, the State of Pennsylvania continues to enforce some of its regulations in addition to Federal order regulations. Inclusion of the Pennsylvania-regulated handlers in the consolidated marketing area would have little effect on handlers' costs of Class I milk (or might reduce them), and would reduce returns to a few producers. In

view of these considerations, it appears that stable and orderly marketing conditions can be maintained without extending full Federal regulation to State-regulated handlers.

There are significant differences between PMMB regulation and Federal order regulation that make it difficult to determine whether PMMB regulation gives State-regulated handlers a cost advantage over Federally-regulated plants distributing milk in the same areas. Some of the differences between PMMB and Federal order regulation are: (1) The number of classes of use (two versus four); (2) the location at which milk is priced (where it is distributed for sale to consumers versus where it is received from producers for processing); (3) individual handler pooling versus marketwide pooling; and (4) State regulatory treatment of milk sold in interstate commerce, including milk distributed outside the State and received from outside the State. In addition to creating different costs among similarly-located State- and Federally-regulated handlers, PMMB regulation may result in different costs between similarly-located PMMB-regulated handlers. However, since the main focus of this rulemaking process has been to consolidate existing Federal marketing areas, it would be more appropriate to consider this issue of marketing area expansion in Pennsylvania at a future time.

Maine has been and continues to be excluded from Federal order regulation. Three comments, two from New York State Dairy Foods and one from Crowley Foods, Inc., a fluid milk processor with distributing plants regulated under the New York-New Jersey and New England orders, suggested including Maine in the consolidated Northeast order on the basis that Maine regulation depends on balancing seasonal reserves on the New England order, and that the inclusion of Maine would allow similarly situated handlers equal opportunities. Five comments supported Maine's exclusion from Federal orders because of its geographic separation from other areas, its long history of successful milk marketing regulation, and the limited impact of its pricing system on other regulated areas.

There appears to be little reason to add the State of Maine to the consolidated Northeast order area. Maine handlers with significant distribution in the Federal order areas can be and are pooled under Federal orders, limiting the extent of any competitive advantage. Inclusion of Maine-regulated handlers in the consolidated marketing area would have little effect on handlers' costs of Class I milk (or might reduce them), and would reduce returns to a few producers. When not pooled under Federal orders, Maine handlers are subject to minimum prices paid for milk, and producers are assured minimum prices in payment for milk. There is no compelling reason to extend Federal order regulation to encompass this State-regulated marketing area.

The Western New York State order area, proposed to be added to the consolidated Northeast area because the persons regulated under that order had so requested, is not included. Upstate Milk Producers Cooperative (Upstate), the entity that would be most affected by the inclusion of this area, had supported its addition prior to issuance of the proposed rule. Because the proposed rule failed to include the State-regulated Pennsylvania areas in the consolidated Northeast area, however, Upstate determined that it would be faced with unfair competition from PMMB-regulated handlers and requested that the Western New York order area be left out of the consolidated Northeast order area.

All of the comments received that dealt with the inclusion of unregulated area in the States of Massachusetts, New Hampshire, and Vermont and the currently-unregulated northern area of New York State in the consolidated Northeast order area supported the addition of this area. According to the comments, inclusion of the currently unregulated areas will assure that distributing plant operators that currently are fully regulated would be placed on an equal competitive footing with handlers currently unregulated, while having no negative effect on the producers who would be affected. Inclusion of these currently unregulated areas would lighten handlers' reporting burden and the market administrator's administrative burden in keeping separate data on sales in this small unregulated area. The number of handlers who would be affected by these additions is minimal, and the additions would enhance the efficiency of Federal order administration while easing the reporting burden of regulated handlers.

In addition to the northern portions of New Hampshire, Vermont, and New York, and the small area of Massachusetts, the offshore Massachusetts counties of Dukes and Nantucket are added to the marketing area. The only entity currently operating in those counties (a producer-handler on Martha's Vineyard) would be exempt from the pooling and pricing provisions of the order by virtue of its status as a producer-handler and by having fewer than 150,000 pounds of route disposition per month. Mainland handlers distributing milk in these two counties would find their reporting burden eased if these counties become part of the marketing area.

Appalachian

The consolidated Appalachian marketing area is comprised of the current Carolina (Order 5) and Louisville-Lexington-Evansville (Order 46) marketing areas (less one Kentucky county that is included in the consolidated Southeast marketing area) as well as 64 counties and 2 cities formerly comprising the marketing area of the Tennessee Valley Federal Order (Order 11), terminated in October 1997, and currently-unregulated counties in Indiana and Kentucky. There are 297 counties and 2 cities in this consolidated marketing area. This area remains unchanged from the proposed rule.

Geography

The Appalachian market is described geographically as follows: 7 unregulated Georgia counties (formerly part of Order 11), 20 Indiana counties (17 currently in Order 46 and 3 currently unregulated), 81 Kentucky counties (47 currently in Order 46, 16 formerly part of Order 11, and 18 currently unregulated), all North Carolina and South Carolina counties (100 and 46, respectively, and all currently in Order 5), 33 Tennessee counties (formerly part of Order 11), 8 counties and 2 cities in Virginia (formerly part of Order 11), and 2 West Virginia counties (formerly part of Order 11).

The consolidated Appalachian market reaches from the Atlantic coastline westward to southern Indiana and western Kentucky's border with Illinois. It is surrounded by Illinois on the west, Indiana, northeastern Kentucky, West Virginia and Virginia to the north, the Atlantic Ocean on the east, and Georgia, Alabama, western Tennessee and southwestern Kentucky to the south. Measuring the extreme dimensions, this market extends about 625 miles from its northwest corner in Indiana to its southeastern corner on the South Carolina-Georgia border, about 300 miles south-to-north from the South Carolina-Georgia border to the North Carolina-Virginia border, about 500 miles west-to-east from the Appalachian-Southeast markets' border in Tennessee to eastern North Carolina, and about 375 miles west-to-east from the Illinois-Indiana border to West Virginia and Virginia.

The Appalachian market is contiguous to 3 other consolidated

marketing areas: the Southeast area to the southwest and south, the Central area to the west and the Mideast area to the north. Unregulated counties in West Virginia and State-regulated area in Virginia also border this market to the north. North and South Carolina have almost 500 miles of coastline on the Atlantic Ocean.

In terms of physical geography, similarities exist across the states or areas included in this market. Southern Indiana and central Kentucky are in the Interior Low Plateau region where valleys and steep hillsides are typical. In this market, the Appalachian or Cumberland and Alleghany Plateaus are found in West Virginia, Virginia, Kentucky, Tennessee and northwestern Georgia on the western edge of the Appalachian Mountains. Eastern Tennessee and both western North and South Carolina are in the Blue Ridge region, which is part of the Appalachian Mountain range. Moving eastward toward the Atlantic Ocean, the central part of the Carolinas are in the Piedmont Plateau, with the Atlantic Coastal Plain covering approximately the remaining eastern half of both these states.

Climatic types in this region vary somewhat. Humid subtropical climates are typical in most of North and South Carolina, as well as Virginia (which is affected by elevation differences) and southern Indiana. Humid continental climates are typical for northwestern Georgia, western North and South Carolina and southern West Virginia. Temperate climates are common in eastern Tennessee and central Kentucky.

Much of the consolidated Appalachian area does not provide a hospitable climate or topography for dairy farming. As an agricultural pursuit, dairy farming is far down the list in the area, accounting for an average of less than five percent of all receipts from farm commodities for the states involved. Crops such as tobacco, corn and soybeans, and other livestock commodities such as cattle/calves, turkeys and broiler chickens are more prevalent in this region.

Population

According to July 1, 1997, population estimates, the total population in the Appalachian marketing area is 17.3 million. There are 24 Metropolitan Statistical Areas (MSAs) within the consolidated marketing area, containing 62.3 percent of the area's population. The largest 17 contain 57 percent of the population of the market. Charlotte, North Carolina, is the largest MSA in the marketing area with a population of 1.35 million. Charlotte is located near the South Carolina border about at the mid point of the North and South Carolina border, and about 250 miles west of the Atlantic coast. Less than 100 miles to the north lies the second-largest MSA of Greensboro-Winston-Salem-High Point, North Carolina, with a population of 1.15 million. About 50 miles east of Greensboro is the third-largest MSA, Raleigh-Durham-Chapel Hill, with 1.05 million people. The Raleigh MSA abuts the Greensboro MSA. An additional four North Carolina MSAs are among the largest of the 17 MSAs containing 57 percent of the population of the consolidated marketing area, for a combined population of one million. North Carolina is the most populous state in the consolidated marketing area with 7.4 million; over sixty percent of the population of North Carolina is located in these seven MSAs.

South Carolina is the second-most populous state in the consolidated area, with 3.8 million people. The Carolinas contain nearly two-thirds of the consolidated market's population. Greenville is the largest MSA in the state with a population of 905,000. Greenville is located in the northwest corner of the state. Charleston, the second-largest MSA in South Carolina, with over half a million people, is approximately at the midpoint of South Carolina's coast.

The Tennessee portion of the consolidated Appalachian market has a population of 2 million, with three MSA's that are included in the largest 17 in the market. These three areas contain 1.6 million, or just under 80 percent of the population in that part of Tennessee that is included in the Appalachian marketing area. The largest Tennessee MSA is Knoxville, which is in the eastern end of Tennessee near North Carolina. Six counties make up the Knoxville MSA with a combined population of 650,000. The Johnson City-Kingsport-Bristol area, the second-largest Tennessee MSA, is located in the northeastern tip of Tennessee along the Virginia and North Carolina border, and contains 460,000 people. Chattanooga, the third-largest MSA in Tennessee, is located on the Tennessee-Georgia border, and has a population of 447,000. The three MSAs run northeast to southwest just west of the North Carolina border.

The Kentucky portion of the consolidated Appalachian market contains 2.7 million people. There are two MSAs within the state that are included in the largest 17 in the market. The largest is Louisville, which lies on the border with Indiana and has a population of one million. Lexington, the second-largest Kentucky MSA, is located in the center of the state and has just under half a million people. Generally, the Kentucky counties in the Appalachian marketing area are not heavily populated. Only two have populations over 100,000. They are Jefferson county, where Louisville is located, and Fayette county, home to Lexington.

Indiana counties in the Appalachian market have a population of .8 million. Only Vanderburgh county has a population over 100,000. Evansville, the only MSA in the portion of Indiana included in the Appalachian market, is in Vanderburgh county. Evansville's MSA contains 289,000 and is located on the Indiana-Kentucky border, near the Illinois state line.

There are seven Georgia counties within the consolidated Appalachian marketing area, with a total population of .3 million. Three of them, Catoosa, Dade, and Walker, are part of the Chattanooga MSA. These three counties have a combined population of 124,000. The 10 Virginia counties in the Appalachian market have a population of .3 million. Three of the counties, Scott, Washington and Bristol City, are part of the Johnson City-Kingsport-Bristol MSA. The two West Virginia counties within the Appalachian market have a total population of .1 million.

Fluid Per Capita Consumption

Estimates of fluid per capita consumption within the consolidated Appalachian marketing area vary from 15.8 per month for South Carolina to 20.4 pounds per month for Indiana. Use of 17 pounds per month as a weighted average results in an estimated 294 million pounds of fluid milk consumption for the Appalachian marketing area. Appalachian handlers' route disposition within the area during October 1997 totaled 283 million pounds, with another 21 million distributed by other order plants, partially regulated plants, and plants exempt both for reasons of both size and institutional status.

Milk Production

Milk production data for the Appalachian consolidated order area has not been updated from December 1996 to October 1997 as have the data for most of the other consolidated order areas. The Tennessee Valley order was terminated October 1997. As a result, on the basis of 10 percent of receipts distributed within the Southeast order area, three of the Tennessee Valley-regulated handlers became pool plants under the Southeast order. Consequently, milk production data for

the consolidated Appalachian and Southeast orders based on October 1997 pool data would not be representative of the milk that would be pooled on those consolidated orders. Available information indicates that the sources of milk for the consolidated Appalachian market have not changed in any significant way from the December 1996 data.

In December 1996, over 4,000 producers from 359 counties in 15 states pooled 443.3 million pounds of producer milk on Orders 5, 11 and 46. Approximately 71 percent of the milk pooled on the three orders was produced within the proposed consolidated marketing area.

North and South Carolina are the only States that are located entirely within the consolidated marketing area, and provided nearly all of their producers' milk to Order 5 (encompassing the entire States of North and South Carolina), with 103.7 and 34 million pounds, respectively. Neither of these states produces enough milk to meet even the fluid milk requirements of its population. Kentucky producers pooled 101.1 million pounds on the three orders, with 89 percent produced within the consolidated marketing area. Tennessee producers pooled 69.9 million pounds on the three orders, principally on Order 11, with 84 percent produced within the consolidated marketing area. Although Virginia is primarily outside the marketing area, producers from 40 Virginia counties supplied 68.5 million pounds of milk for the Tennessee Valley and Carolina order markets in December 1996. Georgia producers pooled 27.6 million pounds and Indiana producers pooled 21 million pounds in December, with the balance of the milk pooled on the three orders originating in Alabama, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, Pennsylvania, and West Virginia.

Thirty-four counties each supplied over 3 million pounds of milk to the three markets consolidated in this area. One such county was located in New Mexico, and another in Pennsylvania. Eight were located in Kentucky, south and southwest of Lexington, and southeast of Louisville. Eleven were located in North Carolina west of the Raleigh-Durham area, with all but one located near Greensboro, Winston-Salem, Asheville, Charlotte or Durham. Of the two South Carolina counties that supplied over 3 million pounds each, one was located northwest of Columbia, and the other northwest of Charleston. The five Tennessee counties that pooled over 3 million pounds of milk on the three orders are located in northeast and southeast Tennessee; two in the Johnson City-Kingsport-Bristol area and three southwest of Knoxville. Only one of the six counties in Virginia that supplied over 3 million pounds to Orders 5 and 11 is located within the marketing area. Five of the six are located in southwest Virginia, with the other in the northwest part of the State.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route dispositions as in-area sales and updated for known plant closures through December 1998, 31 distributing plants would be expected to be associated with the Appalachian marketing area, including 25 fully regulated distributing plants (23 currently fully regulated, 1 currently partially regulated, and 1 currently unregulated), 2 partially regulated (both currently partially regulated), 3 exempt plants, on the basis of having less than 150,000 pounds of total route disposition per month (2 currently fully regulated and 1 currently unregulated), and 1 government agency plant (currently a government agency plant).

Four of the 31 distributing plants expected to be associated with the consolidated area are located in Virginia, with only one located within the marketing area. The plant in the marketing area currently is fully regulated and is expected to remain so, and one of the other Virginia plants, currently partially regulated, also is expected to be fully regulated. The other two Virginia plants, both currently partially regulated, are expected to remain in that status. Since October 1997, 2 distributing plants in the marketing area have gone out of business.

Under the consolidated Appalachian order, there would be 18 distributing plants in the largest Appalachian MSAs having distributing plants. There would be 3 pool distributing plants in the Greensboro-Winston-Salem-High Point area. The Charleston area would have 2 pool distributing plants. The Johnson City-Kingsport-Bristol, Tennessee, area would have 2 pool distributing plants. The Greenville-Spartanburg-Anderson, South Carolina, area would have 2 pool distributing plants. The Knoxville area would have 1 pool distributing plant and 1 exempt plant, with less than 150,000 pounds of total route disposition per month. The Charlotte, Chattanooga, Lexington, Louisville, and Evansville areas would each have 1 pool distributing plant. The Raleigh-Durham area would have one government agency plant and one plant exempt on the basis of size.

Of the remaining 13 distributing plants associated with the market, one pool plant would be located in a North Carolina MSA and one pool plant would be located in a South Carolina MSA. The eleven remaining distributing plants, eight of which are expected to be pool plants, would not be located in MSAs. Three (2 pool, 1 exempt) would be in North Carolina, and 3 would be in Virginia (1 pool and 2 partially regulated). Three plants in Kentucky, 1 in Indiana, and 1 in Tennessee are expected to be pool plants.

The 25 plants expected to be fully regulated under the Appalachian order had distribution totaling 365 million pounds in October 1997, with 78 percent within the consolidated marketing area.

A South Carolina plant included above in the description of fully regulated distributing plants—Superbrand Dairy Products, Inc., in Greenville (about 140 miles northeast of Atlanta)— has a greater proportion of its sales in the Southeast market than in the Appalachian market. This plant currently is locked into regulation under the Carolina order based on its need to procure a milk supply in the Carolina order, although it has greater route disposition in the Southeast. This lock-in is included in the Appalachian order provisions.

Utilization

As in the case of milk production data, October 1997 data for the three markets consolidated in the Appalachian order are not available because of the termination that month of the Tennessee Valley order. Instead of using October 1995 data from the proposed rule, however, September 1997 data is used as representative for this section.

According to September 1997 pool statistics for handlers who would be fully regulated under this Appalachian order, the Class I utilization percentages for the Carolina and Louisville-Lexington-Evansville markets and the former Tennessee Valley market were 86, 80, and 87 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Appalachian order, the potential impact of this decision on producers who supply the current market areas is estimated to be: Carolina, unchanged (from $13.59); Louisville-Lexington-Evansville, a 3-cent per cwt increase (from $12.73 to $12.76); and Tennessee Valley, a 6-cent

per cwt decrease (from $13.38 to $13.32). The weighted average use value for the consolidated Appalachian order market is estimated to be $13.35 per cwt. For September 1997, combined Class I utilization for Orders 5, 11 and 46 was 85.0 percent based on 349.0 million pounds of producer milk used in Class I out of 410.4 million total producer milk pounds pooled.

Other Plants

Also located within the consolidated Appalachian marketing area during May 1997 were 13 supply or manufacturing plants: 4 in Kentucky (1 in the Louisville area), 5 in North Carolina (1 in the Charlotte-Gastonia-Rock Hill area and one in the Greensboro-Winston-Salem-High Point area), 1 in Tennessee, and 3 nonpool cheese plants in Indiana (1 in the Lexington area and one in the Louisville area). Three of the 13 plants are pool plants, or have a ''pool side.'' Two of the three pool plants (one in Kentucky and the one in Tennessee) are ''split plants,'' that is, one side of a plant is a manufacturing facility, and the other side receives and ships Grade A milk, and accounting is done separately. Of these pool plants, the pool sides of the 2 split plants have no primary product, shipping only to distributing plants. The nonpool side of one of these plants manufactures cheese, while the nonpool side of the other manufactures powder. The other pool plant is a supply plant that manufactures primarily Class II products. Of the other nonpool plants in the Appalachian marketing area, 5 manufacture primarily cheese and 5 manufacture primarily Class II products.

Cooperative Associations

Using September 1997 cooperative association information for the former Tennessee Valley order area and December 1997 information for the Carolina and Louisville-Lexington-Evansville (Order 46) orders, it can be estimated that approximately 75 percent of the milk in the consolidated Appalachian area was supplied by 12 cooperatives. Dairymen's Marketing Cooperative, Inc., and cooperative associations that merged to form Dairy Farmers of America supplied nearly half of the milk pooled on all three markets during these months. Carolina-Virginia Milk Producers Association, Inc., supplied approximately 20 percent of the milk pooled on both the Carolina and Tennessee Valley markets.

Five cooperative associations supplied 16 percent of the milk pooled under the Carolina order in December 1997, but supplied no milk to the other two markets. Three of these cooperatives pooled no milk on any other Federal order market, while one also pooled milk on the two Ohio orders, the New York-New Jersey order, and the Middle Atlantic order. In addition to the Carolina order, the fifth cooperative pooled the milk of Texas producers on the Texas, Southern Illinois-Eastern Missouri, Chicago, and Southeast orders.

In addition to the 55 percent of the September 1997 Tennessee Valley milk supply from cooperative associations pooling milk on the other two Appalachian markets, one cooperative that also pooled milk on the Southeast order in December 1997 supplied approximately 15 percent of the milk pooled on the Tennessee Valley order.

Three cooperative associations that supplied less than 2 percent of the milk pooled under Order 46 did not supply milk to either the Carolina or Tennessee Valley markets.

Criteria for Consolidation

Overlapping route disposition and procurement are the primary criteria on which this consolidation is based. There is a stronger relationship between the three marketing areas involved than between any one of them and any other marketing area on the basis of both criteria. Route dispositions within the Appalachian area by handlers who would be regulated under this order account for 93 percent of the total fluid milk products distributed in the area. The primary sources of the remaining 7 percent are four other consolidated order areas, with no more than 3 percent distributed by any of the four. Handlers to be regulated under the Appalachian order distributed nearly 80 percent of their route dispositions within the marketing area.

Over two-thirds of the milk supply for the Appalachian market is produced within the marketing area, with a large part of the rest of the milk supply coming from unregulated areas to the north (Virginia and Pennsylvania). The Appalachian order area supplies a significant minority of the milk supply for the Southeast market, but in October 1997 this amount was less than the amount supplied to the Southeast area from the Southwest area. In addition, a large proportion of the milk produced in the Appalachian order area that was pooled on the Southeast order in October 1997 was received at plants that formerly were pooled under the terminated Tennessee Valley order, and will be pooled under the consolidated Appalachian order. There is also common cooperative association affiliation between the markets.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives that were considered included combining all of the current Florida, Carolina, Tennessee Valley and Southeast order areas, consolidating the Southeast and proposed Appalachian areas, and including all of the State of Kentucky in one order, specifically the Southeast. These alternative consolidations were examined at length and were found to have less overlap in sales and procurement than the Appalachian marketing area.

Thirteen comments that pertained specifically to the proposed Appalachian area were filed by 12 commenters in response to the proposed rule. Six of these comments supported the consolidation of the Appalachian marketing area as described in the proposed rule, including comments filed by several affected dairy farmers, the North Carolina Department of Agriculture, the North Carolina Dairy Producers Association, and a comment filed on behalf of Piedmont Milk Sales, Inc., Hunter Farms, Land O'Sun Dairies and Milkco, Inc. This last comment stated that the Appalachian and Southeast areas should not be combined because a separate milk order area should exist between the consolidated Northeast and Southeast order areas. The comment argued that existence of the Appalachian area would be expected to result in blend price differences between and among the Northeast, Mideast, Appalachian, Southeast and Florida orders such that milk supplies will move South and East as needed.

Seven comments supported the combination of the Appalachian and Southeast areas, or at least the inclusion of more territory in the Appalachian area. The Kentucky Farm Bureau Federation urged that all Kentucky counties and the proposed Appalachian area be combined with the Southeast. The comment stated that this further consolidation would make milk utilization rates more similar across the order, would facilitate and encourage milk flow to deficit areas and minimize any negative price impacts on producers. According to the Carolina-Virginia Milk Producers Association, the existence of separate Southeast and Appalachian order areas could result in disorderly marketing conditions on the eastern side of the proposed Southeast order area. Comments filed by Trauth Dairy urged the inclusion of the northern areas of Kentucky, including the Newport, Kentucky, area containing Louis Trauth Dairy, Inc., in the

proposed Appalachian area rather then in the proposed Mideast area.

A comment filed by DFA supported the inclusion of Charleston, West Virginia, and areas of West Virginia south of Charleston, as well as the Ohio counties surrounding Cincinnati and the northern counties of Kentucky, in the Appalachian market rather than the Mideast market to promote orderly marketing of milk. The DFA comment stated that adequate milk supplies do not exist in close proximity to processors in the greater Cincinnati, Ohio, and Charleston, West Virginia, markets, and that an economic incentive must be provided to assure a milk supply to those processors. A second DFA comment recommended that the Southeast and Appalachian order areas be combined because the primary supplemental milk supply for both areas is in more western states (Texas, New Mexico and Missouri). The comment stated that it is likely that these supplemental supplies would be likely to be associated with the Southeast order because of its greater proximity, and eastern Southeast milk would be ''stair-stepped'' across to the Appalachian order to reduce hauling costs. According to DFA, during the market's flush production month, the Appalachian order would not bear the burden of surplus milk since the distant surplus milk would be associated with the Southeast order in addition to the eastern Southeast milk supplies that also would be associated with the Southeast order to avoid inefficient milk movements, resulting in a disproportionate burden of surplus milk pooled on the Southeast order.

For the month of October 1997, a month when some supplemental supplies usually are required for short markets, nearly one-quarter of the producer milk pooled on the current Southeast order originated in the States of Missouri, New Mexico, and Texas. For the same month, just over 1 percent of the producer milk pooled on the Louisville-Lexington-Evansville and Carolina orders was produced in those more western States. It is clear that the western milk is a much more important source of supply for the Southeast area than for the Appalachian area, and that the magnitude of this difference is an indication of how much these two consolidated markets differ. The ability to pool surplus milk on the Southeast order is directly related to the addition of the southern Missouri/northwest Arkansas area to the Southeast marketing area, an addition that was strongly urged by DFA. Concerns about the ability of handlers in the eastern part of the Southeast area to attract a supply of milk could be addressed more appropriately by the inclusion of transportation credits in the Southeast order than by consolidation with the Appalachian area.

A dairy farmer in West Virginia urged that the State of West Virginia be added to the Appalachian order area because milk usage for Class I milk and cost of production would then become similar to the other states in the Appalachian area. Another dairy farmer referred to a comment filed earlier to include Maryland in the Appalachian area instead of the Northeast.

As discussed in the proposed rule, consolidating the Carolina and Tennessee Valley markets with the Southeast does not represent the most appropriate consolidation option because of the minor degree of overlapping route disposition and producer milk between these areas. That conclusion continued to be supported by data gathered for distributing plants for October 1997.

The northern Kentucky/southern Ohio and West Virginia area was examined in painstaking detail with updated data to determine whether or where this area could be divided to reflect handlers' sales areas and supply procurement areas better than in the proposed rule. No support for such a modification to the proposed rule could be found. Only one Appalachian handler has significant route disposition within the Ohio Valley order area, while a very small volume of Class I sales moves from the Ohio Valley area into the Order 46 area. There is even less overlap between either West Virginia or Maryland and the Appalachian area, and no justification for changing the marketing area of either of these States.

Florida

The consolidated Florida marketing area is comprised of the three current Federal order marketing areas contained wholly in the state of Florida: Upper Florida (Order 6), Tampa Bay (Order 12) and Southeastern Florida (Order 13). There are 63 counties in this consolidated area (40 in Order 6, 13 in Order 12, and 10 in Order 13). This area remains unchanged from the proposed rule.

Geography

The consolidated Florida marketing area is described geographically as all counties in the State of Florida, with the exception of the four westernmost counties in the Florida Panhandle. This marketing area is a large peninsula, ranging from about 140 miles in width in the north to about 50 miles in width in the south, that extends south from the southeast U.S. about 400 miles between the Atlantic Ocean and the Gulf of Mexico. Also included in the Florida market is approximately 150 miles of the Panhandle, a narrow strip of land extending west along the Gulf of Mexico from the northern part of the peninsula. The water surrounding most of Florida's peninsula constitutes a natural boundary, as east-to-west travel is limited.

Almost all of Florida has a humid subtropical climate. The southern end of the state and the islands south of the peninsula have a tropical wet and dry climate. In general, the state's climate can and does affect levels of milk production negatively. Seasonal variation in production for this market typically is greater than for most other U.S. regions. The importance of dairy farming as an agricultural pursuit in Florida is relatively minor (7 percent of total receipts from agricultural commodities), with several crops contributing more total receipts to the State's income. However, no livestock commodity is as important in Florida as dairy farming.

Population

According to July 1, 1997, population estimates, the total population in the consolidated Florida marketing area is 14.1 million. Ninety-three percent of the population of the marketing area is located in Metropolitan Statistical Areas (MSAs). The two largest MSAs are Miami-Fort Lauderdale (Miami) on the eastern side of the southern end of the peninsula, and Tampa-St. Petersburg-Clearwater (Tampa) midway on the western side of the peninsula. Broward and Dade Counties comprise the Miami population center (currently in Order 13) with a population of 3.5 million. The Tampa population center (currently in Order 12) is comprised of Hernando, Hillsborough, Pasco and Pinellas counties with a population of 2.2 million. The six counties in these two population centers represent about 41 percent of the total marketing area population.

Fluid Per Capita Consumption

Florida customarily is considered a deficit milk production state. For much of the year, milk needs to be imported from other states in order to meet the demand for fluid consumption. Based on the population figure of 14.1 million and an estimated per capita fluid milk consumption rate of 17 pounds of fluid milk per month, total fluid milk consumption in the Florida marketing area is estimated at 239.7 million pounds per month.

During October 1997, 216 million pounds of milk were disposed of in the consolidated marketing area by all Florida distributing plants expected to be fully regulated under the Florida order. Other order plants had route disposition within Florida of 14.2 million pounds. Another 1.3 million pounds of milk was distributed within the consolidated area by partially regulated handlers, producer-handlers, and exempt plants. The discrepancy between the actual total route disposition of 231.5 million pounds and the estimated consumption level of 239.7 million pounds may be explained by the older than average population in Florida.

Milk Production

In October 1997, 175.8 million pounds of milk produced in Florida were pooled in four Federal orders; 98.5 percent of this milk was pooled on the three current Florida orders. About 340 producers located in Florida (96 percent of all Florida producers having association with Federal orders) had producer milk pooled on at least one of the three Florida markets. A small number of Florida producers had producer milk associated with Order 7, while more than 100 Georgia producers had producer milk associated with the Florida markets. Additionally, 44.7 million pounds of Georgia milk was pooled on the three Florida markets; 89 percent of this milk went to Order 12.

There are 40 counties in Florida that pooled milk in at least one of the three current Florida orders. Eight of these counties produced 66.5 percent of the milk pooled.

Three counties (Gilchrist, Lafayette and Suwannee, about 75 miles west of Jacksonville) had 42.3 million pounds of producer milk. For these three counties, 72.6 percent of the October 1997 producer milk was pooled on the Tampa Bay order, which is located approximately 150 miles southeast of the counties.

Nearly 90 percent of Clay County's producer milk was pooled in Order 6. This county is in the Jacksonville MSA, which is the largest population center in Order 6.

Twenty-two and one-half million pounds of producer milk came from Hillsborough, Highlands, and Manatee Counties, all part of the Order 12 market. However, 64 percent of this milk was pooled on Order 13, with the rest pooled on Order 12.

Okeechobee County, located in the Order 13 marketing area about 125 miles northwest of the Miami area, is by far the largest milk producing county in Florida. The county had 43.8 million pounds of producer milk in October 1997, almost all of which was pooled on Order 13.

Distributing Plants

Using plant lists included in the proposed rule, with pooling standards adjusted to 25 percent of route dispositions as in-area sales, updated for known plant closures through December 1998, 12 plants would be expected to be fully regulated under the consolidated Florida market. Four of these plants are located in the Miami MSA and three in the Tampa MSA. Three plants are located in mid-Florida, one in the Orlando area and two in the Lakeland-Winter Haven area. Two more are located in northeast Florida: one in the Jacksonville area, and one in Daytona Beach. One plant in the Tampa MSA, currently fully regulated, would be exempt on the basis of size. One partially regulated plant in the Jacksonville area would be expected to continue its partially regulated status, and one producer-handler is not located within an MSA.

Slightly less than two-thirds of the consolidated market's population is contained in the MSAs where fully regulated plants are located.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Florida order, the Class I utilization percentages for the Upper Florida, Tampa Bay, and Southeastern Florida markets were 91, 88, and 94 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Florida order, the potential impact of this rule on producers who supply the current market areas is estimated to be: Upper Florida, a 4-cent per cwt decrease (from $15.39 to $15.35); Tampa Bay, a 8-cent per cwt increase (from $15.54 to $15.62); and Southeastern Florida, a 13-cent per cwt decrease (from $16.03 to $15.90). The weighted average use value for the consolidated Florida order market is estimated to be $15.69 per cwt. For October 1997, combined Class I utilization for the three Florida markets was 90.6 percent based on 197.5 million pounds of producer milk used in Class I out of 218.0 million total producer milk pounds.

Other Plants

Also located within the Florida marketing area during May 1997 were four supply or manufacturing plants, three of which are not associated with the current markets' pools. Three ice cream plants are located in the Tampa area and one pool supply plant is in the Jacksonville area.

Cooperative Associations

In December 1997, three cooperatives marketed milk in the Florida markets, representing nearly 100 percent of the milk marketed. Effective October 1, 1998, Florida Dairy Farmers Association, which marketed milk under all three Florida orders, and Tampa Independent Dairy Farmers' Association, Inc., which marketed milk only under the Tampa Bay order, merged to create Southeast Milk, Inc. The December 1997 production marketed by these two cooperatives in all three Florida orders comprised 93 percent of the producer milk associated with the three markets. Dairy Farmers of America, Inc. (DFA), members marketed nearly 7 percent of producer milk associated with the three Florida orders on the Tampa Bay and Southeastern Florida pools.

Criteria for Consolidation

The consolidated Florida market should encompass the current marketing areas of the Upper Florida, Tampa Bay and Southeastern Florida Federal milk orders. Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders, and into and out of the area.

Discussion of Comments and Alternatives

Prior to the issuance of the proposed rule, the inclusion of other Federal order marketing areas with the consolidated Florida area was considered because of the existence of some overlap of sales, procurement of producer milk, and dispositions of surplus milk. However, because of the closeness of the relationship between the current Florida markets and the lack of significant overlap of sales or production with other order areas no basis was seen for expanding the consolidation any further.

Only three comments were received that pertained specifically to the consolidated Florida area. These comments, filed by the three cooperative associations with

membership in the consolidated Florida marketing area, supported the consolidation of the current three Florida order areas without any additional territory.

Southeast

The consolidated Southeast marketing area is comprised of the current Southeast (Order 7) marketing area, portions of the current Southwest Plains (Order 106) marketing area in northwest Arkansas and southern Missouri, and six southeastern Missouri counties from the current Southern Illinois-Eastern Missouri (Order 32) marketing area. Also included are 16 currently unregulated Missouri counties, 21 currently unregulated Kentucky counties, and 1 Kentucky county that currently is part of the Louisville-Lexington-Evansville (Order 46) marketing area. There are 572 counties in this consolidated area. A partial county in Missouri that was proposed to be included in the Southeast area has been omitted.

Geography

The Southeast market is described geographically as follows: all counties or parishes in Alabama, Arkansas, Louisiana, and Mississippi (67, 75, 64, and 82 counties, respectively), 4 in Florida, 152 in Georgia, 44 in Missouri, 62 in Tennessee and 22 in Kentucky (one—Logan County—currently is in Order 46, and 21 currently are unregulated). Of these 21 counties, 14 were part of the former Paducah, Kentucky (Order 99) marketing area. Eleven Arkansas and 22 Missouri counties are part of the current Order 106 marketing area. Six Missouri counties are part of the current Order 32 marketing area. Sixteen southeastern Missouri counties currently are unregulated (4 of these were part of the former Paducah Federal milk order). A partial Missouri county that was proposed to be part of the Southeast area is omitted for the purpose reducing the incidence of partially regulated counties.

The Southeast market spans the southeastern area of the United States from the Gulf of Mexico and the Alabama/Georgia-Florida border north to central Missouri, Kentucky, Tennessee, and South Carolina, and from the Atlantic Ocean west to Texas, Oklahoma, and Kansas. Measuring the extreme dimensions, this market extends about 575 miles north to south from central Missouri to southern Louisiana and 750 miles west to east from Louisiana's border with Texas to the Atlantic Ocean coast in southern Georgia.

The Southeast marketing area is contiguous to 4 other consolidated marketing areas: Florida to the southeast, the Southwest to the west, the Central to the northwest and the Appalachian to the northeast and east. Georgia's coastline on the Atlantic Ocean is about 100 miles in length, while western Florida, Alabama, Mississippi, and Louisiana extend about 600 miles along the Gulf of Mexico coastline. Also contiguous to the current Southeast market are currently unregulated counties in Texas, Missouri, Kentucky (and as of October 1, 1997, the Tennessee Valley [Order 11] marketing area). The consolidated marketing areas would encompass all of these counties in the Southwest, Central, Appalachian or Southeast marketing areas, with some currently-unregulated counties in central Missouri remaining unregulated under this proposal.

In terms of physical geography, the Southeast region is generally flat or gently rolling low-lying land. Relatively higher elevations which might potentially form natural barriers or obstruct easy transportation exist in northwest Arkansas and northeast Georgia.

Moving from the south to the north of the Southeast market, climates range from humid subtropical in coastal areas to warm and humid or humid continental to temperate in Tennessee and Kentucky. Warm, humid summers and mild winters are typical in the Southeast. These types of climates can severely limit the production level of dairy herds in the summer.

Population

According to July 1, 1997, population estimates, the total population in the consolidated Southeast marketing area is 26.9 million. The 42 Metropolitan Statistical Areas (MSAs) in the market account for 62.3 percent of the total marketing area population. Almost half of the Southeast population is located in the 17 most populous MSAs. Eight MSAs have populations greater than 500,000 each; their total population is about 36 percent of the Southeast population. Because of the large number of MSAs in the Southeast market and also because no large (i.e., greater than 500,000) population centers are added to this market, only those areas with populations greater than 500,000 are described in greater detail.

Over 25 percent of the Southeast market's population is located in Georgia, the most populous of the Southeast market states, with 7.2 million people. Almost half of Georgia's population is concentrated in the Atlanta MSA, located about 60 miles south of the Southeast-Appalachian marketing area boundary in the northwest portion of the state. Atlanta is the largest city in the Southeast market with a population of 3.6 million.

With 4.3 million people, Alabama is the Southeast market area's third most populous state. Birmingham and Mobile, the state's two largest MSA regions, are among the top eight in population in the Southeast. The Birmingham area has a population of about 900,000 and ranks 5th in size among all Southeast area MSAs. Birmingham is located about 150 miles west of Atlanta in north central Alabama. The Mobile area is a Gulf of Mexico port city in southwestern Alabama. With a population of 527,000, Mobile is the 8th largest population center in the Southeast market area.

Louisiana is the second most populated state in the Southeast market area with 4.4 million people. Two of the Southeast's 8 largest MSAs are located in Louisiana—New Orleans, the second largest MSA with 1.3 million people and Baton Rouge, the 6th largest MSA with almost .6 million people. New Orleans is located in the state's ''toe'' in southeastern Louisiana. Baton Rouge also is located in Louisiana's ''toe,'' about 80 miles west of New Orleans.

Arkansas has a total population of 2.5 million—2 million from the current Southeast marketing area and an additional 500,000 from the Arkansas portion of the Southwest Plains marketing area. The Little Rock-North Little Rock, Arkansas (Little Rock) MSA, in the center of Arkansas, has the 7th largest population concentration in the Southeast market area with 552,000.

The portion of Tennessee in the Southeast marketing area is the fourth most populated with 3.4 million people and is home to the third and fourth largest MSAs in the Southeast. The Nashville area, with a population of 1.1 million, is located in central Tennessee. The Memphis, Tennessee/Arkansas/Mississippi MSA, also with a population of 1.1 million, is located near these three states' borders.

Other states or portions of states in the Southeast marketing area do not have MSAs with greater than 500,000 population. Mississippi, the Southeast's 5th most populous state, has a total population of 2.7 million. The Missouri, Florida, and Kentucky counties in the Southeast market have populations of 1.3 million, 602,000 and 529,000, respectively.

Fluid Per Capita Consumption

Fluid per capita consumption estimates vary throughout the Southeast

market from a low of 16 pounds of fluid milk per month in Mississippi to a high of 19 pounds in Arkansas and Kentucky. Multiplying the individual states' consumption rates by their population results in an estimated fluid milk consumption rate of 468 million pounds of fluid milk per month for the Southeast marketing area.

Route distribution in the consolidated Southeast area by handlers expected to be regulated under the consolidated Southeast order (including the 3 Arkansas and Missouri plants) equaled 380 million pounds within the Southeast marketing area in October 1997. Other fluid milk dispositions in the consolidated Southeast marketing area came from plants expected to be regulated under other orders (66.7 million pounds) and from partially regulated, exempt and producer-handler plants (2 million pounds).

Milk Production

Milk production data for the Southeast consolidated order area have not been updated from January 1997 to October 1997 as have the data for most of the other consolidated order areas. As a result of terminating the Tennessee Valley order as of October 1997, three of the Tennessee Valley-regulated handlers became pool plants under the Southeast order, on the basis of having at least 10% of their sales in the Southeast order marketing area. These handlers will become regulated under the consolidated Appalachian order when the consolidated orders become effective. Consequently, milk production data for the consolidated Southeast order area based on October 1997 pool data would not be representative of the consolidated Southeast market. Available information indicates that the sources of milk for the consolidated Southeast market have not changed significantly from the January 1997 data.

In January 1997, 4,180 producers from 388 counties pooled 477.4 million pounds of producer milk on the current Southeast market. Over 85 percent of the Southeast's producer milk came from Southeast market area counties. Of the 388 counties, 19 pooled over 5 million pounds each, accounting for 39 percent of Order 7's producer milk. Of these 19 counties, 2 Texas counties are located outside the Southeast marketing area. Because of the large number of counties, only the locations for those top 19 production counties are described in greater detail. However, the volume of producer milk, number of producers (farms) and number of counties is provided for each state within the market area.

Almost 73 million pounds of milk were pooled on the Southeast market from 581 producers in 28 Louisiana parishes in January 1997. Top production parishes are Tangipahoa, Washington and St. Helena, all located in the state's ''toe,'' north of New Orleans and northeast of Baton Rouge, each bordering Mississippi. Another high production area is centered on De Soto Parish in northwestern Louisiana. These four parishes account for over 62 million pounds of producer milk, with 76 percent coming from Tangipahoa and Washington parishes.

Almost 67 million pounds of milk were pooled on the Southeast market from 331 producers in 68 Georgia counties in January 1997. Of this volume, 64 million came from 312 producers in 64 Georgia counties in the Order 7 marketing area. The balance is associated with Georgia producers located in the marketing area of the former Order 11 (Tennessee Valley). Top production counties are Putnam, Morgan and Macon, which pooled 27 million pounds of producer milk on Order 7.

About 65 million pounds of milk were pooled on the Southeast market from 580 producers in 46 Tennessee counties in January 1997. Of this volume, 62 million came from 562 producers in 42 Tennessee counties in the Order 7 marketing area. The balance is associated with Tennessee producers located in the marketing area of the former Federal Order 11. Two high production counties in the state are Marshall and Lincoln, located in south central Tennessee. These counties contributed over 12 million pounds of producer milk to the Order 7 pool in January 1997.

About 61 million pounds of milk were pooled on the Southeast market from 443 producers in 48 Mississippi counties in January 1997. Top production counties are Walthall and Pike, in southern Mississippi on the state's border with Louisiana. These two counties adjoin the heavy milk production area in Louisiana. The counties contributed 15 million pounds of producer milk to the Order 7 pool in January 1997.

About 32 million pounds of milk were pooled on the Southeast market from 408 producers in 19 Kentucky counties in January 1997. Additionally, 116 producers in 15 of these counties pooled almost 9 million pounds of producer milk on Orders 11 and 46 (Louisville-Lexington-Evansville). Two counties, Barren and Monroe, contributed over 13 million pounds of producer milk. These contiguous counties are in south central Kentucky about 80 miles northeast of Nashville, Tennessee.

Four Missouri counties—Wright, Texas, Laclede and Howell—pooled 33 million pounds of producer milk on Order 7. All of these counties currently are located in the Order 106 (Southwest Plains) marketing area in southern Missouri.

Other Southeast marketing area states or areas contribute producer milk to the Southeast marketwide pool. About 37 million pounds of milk were pooled on the Southeast market from 205 producers in 51 Alabama counties, and 25 million pounds were pooled from 343 producers in 39 Arkansas counties. Sixteen Florida producers from 6 counties (2 in the Southeast market area) pooled 3.5 million pounds on Order 7 in January 1997.

In January 1997, Order 7 producer milk also originated in Missouri counties not included in the Southeast marketing area, Texas, New Mexico, Indiana and Oklahoma. Large amounts of milk from Missouri (21 million pounds in addition to the 33 million described previously) and Texas (46 million pounds—20 million from Hopkins and Erath Counties) were associated with the Order 7 pool.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 48 distributing plants located in the consolidated Southeast marketing area would be expected to be associated with the Southeast market (including the added territory in northwestern Arkansas and southern Missouri). These plants include 36 fully regulated distributing plants, 3 of which are currently regulated under the Southwest Plains order and one of which is currently partially regulated. In addition, it is expected that 3 plants would be partially regulated (one of which currently is fully regulated and two of which are partially regulated), and 7 plants that are, and are expected to be, exempt—1 on the basis of size and 6 on the basis of institutional status. An additional currently regulated plant is expected to be exempt on the basis of institutional status. Of the 36 fully regulated plants, 16 are located in the largest eight MSA regions. One distributing plant located in the consolidated Appalachian marketing area that has more than half of its route disposition within the Southeast marketing area would be locked into regulation under the Appalachian order.

Since October 1997, it is known that 2 pool distributing plants have gone out of business. One of these plants was located in Louisiana and the other in Missouri.

Of the 48 distributing plants, Georgia has 9; Louisiana, 10; Mississippi, 6; Alabama, 8; Arkansas, 6; Tennessee, 5; Missouri, 2; and Kentucky, 2. No distributing plants are located in the Florida counties included in the Southeast market area.

In Georgia, three pool distributing plants and one producer-handler are located in the Atlanta area, with 3 others elsewhere in the State. Georgia also has 1 partially regulated handler and 1 government agency (state prison) plant.

Eight of Louisiana's 10 distributing plants currently are and would continue to be fully regulated (pool plants) in this consolidated marketing area. Four of these 8 are located in either the New Orleans or Baton Rouge areas (2 in each). Four other pool distributing plants are located in Louisiana. The remaining two plants are affiliated with educational institutions.

Four of Mississippi's 6 currently operational distributing plants would be fully regulated pool plants in the Southeast market. Two educational institutions also have plants.

Seven of Alabama's distributing plants are fully regulated. One is located in the Birmingham area and 2 are located in the Mobile area. Of the remaining four, 2 are in northern Alabama, one is in central Alabama, and one is in the state's southeastern corner.

Four of Arkansas' 6 currently operational distributing plants are fully regulated; two are in the Little Rock area, and the other 2 are located in northwest Arkansas. Also located within Arkansas are 2 exempt distributing plants—one on the basis of size and one that is a state prison plant. Four of Tennessee's 5 distributing plants are, and are expected to be, fully regulated. Three of the 4 are located in the Nashville area and one fully regulated plant and one partially regulated plant are located in the Memphis area.

Two distributing plants that would be fully regulated under the Southeast market are located in the currently unregulated Kentucky counties that are added to this marketing area. One is located in Fulton in the southwest corner of Kentucky on the Tennessee border, and the other about 30 miles east of Fulton.

Two Missouri distributing plants are located in the consolidated Southeast area. One is a pool plant located in Springfield, and the other a plant exempt on the basis of institutional status located just south of the Springfield MSA.

Utilization

As in the case of milk production data, October 1997 data for the consolidated Southeast order are not used because of the termination that month of the Tennessee Valley order. Instead of using October 1995 data from the proposed rule, however, September 1997 data is used as representative for this section.

According to September 1997 pool statistics for handlers who are expected to be fully regulated under the Southeast order, the Class I utilization for the Southeast market was 84 percent. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Southeast order, the potential impact of this rule on producers who supply the current market area is estimated to be a 3-cent per hundredweight increase (from $13.60 to $13.63).

For September 1997, Class I utilization for the Southeast market was 83.9 percent based on 357.2 million pounds of producer milk used in Class I out of 426 million total producer milk pounds.

Other Plants

Also located within the Southeast marketing area during May 1997 were 37 supply or manufacturing plants: 1 in Kentucky, 5 in Alabama (including 1 in the Birmingham area), 5 in Arkansas (including 1 in the Little Rock area), 7 in Georgia (including 4 in the Atlanta area), 3 in Louisiana (including 1 in the Baton Rouge area), 11 in Missouri, 2 in Mississippi, and 3 in Tennessee (including 1 each in the Memphis and Nashville areas). Eight of the 37 plants are pool plants. Of these pool plants, 2 primarily ship to distributing plants, 3 manufacture cheese, 1 manufactures Class II products, 1 manufactures powder and 1 primarily manufactures other products. Of the Southeast marketing area's 28 nonpool plants, 13 manufacture primarily Class II products, 3 manufacture cheese, 10 manufacture primarily other products, and 1 each manufacture primarily butter and cheese. One plant is a ''split plant,'' with one side serving as a manufacturing facility primarily for Class II products, while the other side receives and ships Grade A milk.

Cooperative Associations

In December 1997, thirteen cooperative associations, including 3 of those that merged to become Dairy Farmers of America (DFA), represented members marketing 73 percent of the milk pooled on the Southeast market.

This number of cooperative associations is more than twice the number (six) that pooled milk on the Southeast order in December 1995. Of those six, National Farmers Organization (NFO) ceased marketing milk in the Southeast. Milk Marketing, Inc., headquartered in Strongsville, Ohio, and one of the cooperatives that formed DFA, marketed a small amount of milk in the Southeast in December 1997, and two cooperatives began marketing milk after December 1995. In addition, 5 cooperative associations representing Texas and New Mexico producers pooled milk on the Southeast order in December 1997.

The DFA cooperatives represented 71 percent of co-op milk and 52 percent of the total milk supply pooled under the Southeast order during December 1997. For the same month, Carolina-Virginia Milk Producers Association, Inc., represented 9 percent of the milk pooled by cooperative associations; the two new cooperatives pooled 8 percent of co-op milk; and the five Texas/New Mexico cooperatives pooled 7 percent.

Criteria for Consolidation

Retention of the Southeast marketing area as a single area is based on overlapping route dispositions within the marketing area to a greater extent than with other marketing areas. Procurement of producer milk also overlaps between states within the market. There is also a seasonal need for milk from outside the marketing area. However, the amount of supplemental seasonal supplies is not as great as the amount of milk that is actually pooled under the order from distant areas. There is common cooperative association membership within the marketing area.

As noted in the proposed rule, the addition of northwest Arkansas and southern Missouri to the marketing area is primarily in response to comments received during the public comment period.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives that were considered included incorporating all of the State of Kentucky in the Southeast area, dividing the Southeast area on the state line between Mississippi and Alabama, combining the Florida, Carolina, Tennessee Valley and Southeast order areas, and adding the eastern part of the Texas order area to the Southeast. These

alternatives were analyzed in detail for the proposed rule and determined not to result in a configuration of marketing areas as appropriate as those proposed for reasons discussed in the proposed rule.

Seven comments filed in response to the proposed rule specifically addressed the consolidated Southeast marketing area. A comment filed on behalf of Piedmont Milk Sales, Inc., Hunter Farms, Land O'Sun, and Milkco, Inc., supported and endorsed the portion of the proposed rule that would maintain separate order areas for the Southeast and Appalachian areas. Comments filed by DFA and by Carolina-Virginia Milk Producers Association favored combining the proposed Southeast and Appalachian order areas. In addition, the Kentucky Farm Bureau Federation urged that all Kentucky counties and the proposed Appalachian order be combined with the Southeast. The comment stated that such a configuration would make milk utilization rates more similar across the order, would facilitate and encourage milk to flow to deficit areas and minimize any negative price impacts on producers. These comments were considered in the discussion of comments and alternatives under the Appalachian area.

Comments from Carolina-Virginia Milk Producers Association and Missouri Farm Bureau Federation support the inclusion, as proposed, of southern Missouri/northwest Arkansas in the Southeast marketing area. The Carolina-Virginia Milk Producers' comment noted that this area is a crucial part of the supply area for the southeast region, and that the exclusion of the area from the consolidated Southeast order area could have a detrimental impact on the over-order premium structure of that area. The comment stated that the correction of producer blend prices and creation of a unified marketing area in that part of the southeast region is justified. With regard to southern Missouri, a representative of the Subcommittee on Livestock of the U.S. House of Representatives Committee on Agriculture supported adding southeastern Missouri to the Southeast order area, as proposed. A comment filed by Barber Pure Milk Company opposed adding northwest Arkansas/southern Missouri to the Southeast marketing area on the basis of the minimal overlapping route disposition and potential of diluting the Southeast pool.

A substantial share of the milk production from the portions of Missouri and Arkansas that are added to the Southeast marketing area is pooled under the Southeast order, and this milk represents a substantial share of the total milk production that is pooled under the Southeast market.

Route disposition by distributing plants located within this area would become in-area dispositions from Southeast pool distributing plants. More than half of the dispositions from the three plants that would become Southeast pool distributing plants would be within the consolidated Southeast marketing area.

Mideast

The consolidated Mideast marketing area is comprised of the current Ohio Valley (Order 33), Eastern Ohio-Western Pennsylvania (Order 36), Southern Michigan (Order 40), part of the Michigan Upper Peninsula (Order 44), and Indiana (Order 49) marketing areas plus 6 currently unregulated Indiana counties, 2 whole and 3 partial currently unregulated Michigan counties, and 3 whole and 2 partial currently unregulated Ohio counties. There would be 301 whole and 1 partial county in this consolidated area. Three whole and one partial currently-unregulated Ohio counties that were proposed to be part of the Mideast area are not included.

Geography

The Mideast market is described geographically as follows:

Indiana—72 counties (64 currently in Order 49, 2 currently in Order 33, and 6 currently unregulated on the western edge of the State, just south of the northwest corner) Kentucky—18 counties (all currently in Order 33).

Michigan—77 counties. Two whole and 3 partial counties currently are unregulated. The rest of the area currently is included in Orders 40, 44, 49, and 33. Of the total 83 Michigan counties, only 6 in the western end of the Upper Peninsula are not included in the consolidated Mideast marketing area.

Ohio—84 whole and 1 partial county. Three whole and 2 partial counties to be included currently are unregulated. All of the State currently is included in Orders 33 and 36, except for 3 partial and 6 whole counties.

Pennsylvania—12 whole and 2 partial counties, currently in the Order 36 area.

West Virginia—37 counties; 20 currently in Order 33, 17 currently in Order 36.

The consolidated Mideast marketing area lies directly south of the Great Lakes, with the State of Michigan enclosed on the east and west sides by Lakes Huron and Michigan. On the eastern border of the marketing area, between the Mideast and Northeast marketing areas, is Pennsylvania State-regulated territory and the Allegheny and Appalachian Mountains. On the northeast border is the Western New York State order area.

The east-to-west distance across the consolidated marketing area is approximately 450 miles, from locations on the eastern edge of the area in western Pennsylvania to the border of Indiana and Illinois. Northwest to southeast, from Marquette, Michigan, in the Upper Peninsula to the northeast area of Kentucky in the marketing area is just over 800 miles. From the northern tip of lower Michigan to southern Indiana the more direct north-south distance is 530 miles.

The consolidated Mideast marketing area is contiguous to 3 other consolidated marketing areas. The consolidated Central marketing area would provide the western border of the Mideast marketing area along the Indiana-Illinois border, and the consolidated Appalachian area would provide the southern boundary. The western end of Michigan's Upper Peninsula, part of the consolidated Upper Midwest area, would adjoin the Mideast portion of the Upper Peninsula.

In terms of physical geography, most of the consolidated Mideast marketing area is at low elevations, and relatively flat. The climate and topography are favorable to milk production, with dairy being the number one agricultural commodity in terms of financial receipts in the State of Michigan in 1996. Dairy also ranks high in terms of financial receipts in the rest of the area; 3rd in Ohio and West Virginia, and 5th in Indiana.

Population

According to July 1, 1997, population estimates, the total population in the consolidated marketing area is 31 million. The 34 MSAs in the consolidated Mideast marketing area include 79.8 percent of the area's population. Over 55 percent of the area's population is contained in the 8 most populous MSAs, which each have over 950,000 people. Two-thirds of the population is located in the states of Michigan and Ohio.

The Mideast area's largest and 7th largest of the 34 MSAs are located in Michigan. Detroit-Ann Arbor-Flint, with 5.4 million population, is the largest MSA, and is located in the southeast portion of the state between Lakes Huron and Erie. Grand Rapids-Muskegon-Holland is the 7th largest Mideast MSA, is located approximately 150 miles west-northwest of Detroit, and has a population of 1 million. These two

MSAs contain two-thirds of the population of Michigan. There are 5 other MSAs in Michigan. Two have approximately 450,000 population each, one has approximately 400,000 population, and the other two average approximately 160,000 apiece. Eighty-four percent of the population of Michigan is located in these 7 MSAs, all in the lower half of southern Michigan.

Four of the 8 largest Mideast MSAs are located in the State of Ohio. These are: (1) Cleveland-Akron, the second-largest, with a population of 2.9 million, located on Lake Erie in northwestern Ohio; (2) Cincinnati-Hamilton, OH–KY–IN, the 4th largest, with a population of 1.9 million, located in the southwest corner of Ohio; (3) Columbus, the 6th largest, with a population of 1.5 million, located approximately midway between Cincinnati and Cleveland; and (4) Dayton, the 8th largest, with a population of .95 million.

There are 6 additional MSAs in Ohio, 2 with populations of approximately .6 million each, 1 with a population of .4 million, and 3 that average just over 150,000 each. Eighty-two percent of the population of Ohio is located in MSAs, most in the northern part of the State.

The third-largest MSA in the Mideast area is Pittsburgh, Pennsylvania, with a population of 2.4 million. Pittsburgh is 127 miles southeast of Cleveland. There are two smaller MSAs in the Pennsylvania portion of the consolidated Mideast marketing area, having an average population of about 200,000 each. Eighty-seven percent of the population of the Pennsylvania portion of the Mideast area is located in MSAs.

Indianapolis, Indiana, is the 5th largest MSA in the consolidated Mideast marketing area, with a population of 1.5 million. Indiana contains 9 additional MSAs, 2 with populations of .5 and .6 million, and 7 others that average 155,000 population. All but 2 of the 9 smaller MSAs are located north of Indianapolis. Seventy-four percent of the population of the portion of Indiana that is in the consolidated Mideast area is located in MSAs.

The portion of West Virginia that is within the consolidated Mideast area contains 4 MSAs, 3 of which are located on the West Virginia-Ohio border, along the Ohio River. The population of these MSAs averages just over 200,000. Forty-five percent of the population of the West Virginia portion of the consolidated Mideast area is located in MSAs.

Fluid Per Capita Consumption.

Estimates of fluid per capita consumption within the consolidated Mideast area vary from 18.75 pounds per month for Michigan to 20.4 pounds per month for Indiana. Use of 19 pounds per month as a weighted average results in an estimated 589 million pounds of fluid milk consumption for the Mideast marketing area. Mideast handlers' route disposition within the area during October 1997 totaled 544 million pounds, with another 36 million distributed by 23 handlers fully regulated under other orders. An additional 4.5 million pounds was distributed by partially regulated handlers, producer-handlers, and handlers that would be exempt under this rule on the basis of each having less than 150,000 pounds of route disposition per month.

Milk Production

In October 1997, nearly 11,000 producers from 335 counties in 12 states pooled 1 billion pounds of milk on Federal Orders 33, 36, 40, 44 and 49. Over 90 percent of this producer milk came from Mideast marketing area counties. The States of Indiana, Michigan, Ohio and Pennsylvania supplied 95 percent of the milk (13%, 39.6%, 30.6% and 11.9%, respectively), with 90 percent coming from counties that would be in the consolidated Mideast area. Just over two-thirds of the milk pooled under these orders was produced in Michigan and Ohio counties located within the consolidated marketing area.

Other states pooling milk on the orders consolidated in the Mideast area were Illinois (0.5%), Iowa (0.1%), Kentucky (0.1%), Maryland (0.4%), New York (2.7%), Virginia (0.1%), West Virginia (1.0%), and Wisconsin (0.1%). These states contributed a total of 4.9 percent of the milk pooled on the 5 orders.

Sixty-two of the counties that had production pooled under the five current orders supplied more than 5 million pounds of milk each during October 1997. Six of the counties were in northern and northeast Indiana, over 100 miles from Indianapolis; 11 were in western Pennsylvania—7 of them within 100 miles of Pittsburgh, and the others, including those with the most production (10–22 million pounds), in the northwest corner of the state, within 100 miles of Cleveland, Ohio. Twenty-eight Michigan counties pooled more than 5 million pounds each under the 5 orders, including 14 counties with more than 10 million pounds and 4 counties with more than 20 million pounds. All of these counties are located within 110 miles of Detroit or Grand Rapids, the two largest MSAs in Michigan. The heaviest milk production area of Ohio is the northeast quadrant of the State and within 50 miles of the Akron-Cleveland MSA, including 5 counties supplying over 10 million pounds each during October 1997, and 1 county pooling over 40 million pounds. A smaller production area in Ohio is located in the central portion of the western edge of the State within 80 miles of the Dayton MSA, and includes two counties with over 10 million pounds production and 1 county with over 20 million. The only population centers of the marketing area that do not appear to have adequate supplies of nearby milk are Indianapolis and Cincinnati, in the southern portion of the area.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through January 1998, 72 distributing plants would be expected to be associated with the Mideast marketing area, including 51 fully regulated distributing plants (all currently fully regulated), 4 partially regulated (all currently partially regulated), 4 exempt plants that would have less than 150,000 pounds of total route disposition per month (all currently fully regulated), and 13 producer-handlers (all currently producer-handlers). Since October 1997, 5 distributing plants (1 fully regulated plant in Indiana and 1 in Michigan; 2 partially regulated plants in Pennsylvania; and a producer-handler in Pennsylvania), have gone out of business.

There would be 40 distributing plants in the 8 Mideast MSA's that each have over a million people (including Dayton-Springfield which has .95 million). Twenty-seven of these plants would be pool plants—5 in the Pittsburgh area, 6 in the Detroit area, 4 in the Cleveland area, 3 each in the Grand Rapids, Indianapolis and Cincinnati areas, 2 in Columbus and 1 in Dayton. Nine of the plants in the large MSA areas would be producer-handlers, 3 would be exempt on the basis of having less than 150,000 pounds of milk per month in Class I route dispositions, and 1 would be partially regulated.

Of the remaining 29 distributing plants located in the marketing area, 18 would be located in other MSA's as follows: 5 pool plants and 1 producer-handler in Ohio; 4 pool plants in Indiana; 4 pool plants in Michigan; 2 pool plants in Pennsylvania; 1 pool plant in Kentucky; and 1 pool plant in

West Virginia. The ten remaining distributing plants located in the marketing area would not be located in MSA's. Three of these pool plants and 2 producer-handlers would be located in Michigan; 2 pool plants and 1 plant exempt on the basis of size would be located in Ohio; 2 pool plants would be located in Indiana; and 1 producer-handler would be located in West Virginia.

There are 3 distributing plants that would be outside the marketing area. These would be 1 partially regulated plant in Pennsylvania, and 1 in Virginia. In addition, a small pocket of unregulated area within Ohio would contain one partially regulated plant.

The in-area route disposition standard, proposed to be 30 percent of route dispositions, will instead be 25 percent—the same percentage as in other consolidated orders. This percentage should not result in the full regulation of any handler not currently fully regulated unless they increase sales in the marketing area.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Mideast order, the Class I utilization percentages for the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, Michigan Upper Peninsula, and Indiana markets were 58, 58, 55, 89, and 70 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Mideast order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Ohio Valley, a 4-cent per cwt increase (from $13.46 to $13.50); Eastern Ohio-Western Pennsylvania, a 4-cent per cwt decrease (from $13.51 to $13.47); Southern Michigan, a 6-cent per cwt increase (from $13.27 to $13.33); Michigan Upper Peninsula, a 25-cent per cwt decrease (from $13.34 to $13.09); and Indiana, a 11-cent per cwt decrease (from $13.52 to $13.41). The large decrease for Michigan Upper Peninsula is a result of changing from its current individual handler pool provisions to a marketwide pool (very little reserve milk is pooled under Order 44—instead, it is pooled on the Southern Michigan order). For October 1997, combined Class I utilization for Orders 33, 36, 40, 44 and 49 was 58.7 percent based on 601.6 million pounds of producer milk used in Class I out of 1.025 billion total producer milk pounds pooled. The weighted average use value for the consolidated Mideast market is estimated to be $13.42 per hundredweight.

The Mideast is one of two consolidated marketing areas that has a significantly higher-than-average percentage of its milk used in Class II. Currently, the Southern Michigan, Ohio Valley and Indiana markets have Class II utilization over 20 percent. When the markets are combined the average for the consolidated market will be just under 20 percent.

Other Plants

Also located within the Mideast marketing area during May 1997 were 59 supply or manufacturing plants: 1 in Charleston, West Virginia, 4 in Pennsylvania, 18 in Michigan, 9 in Indiana and 27 in Ohio. Nine of the 59 plants are pool plants. Of these pool plants, 6 are supply plants—1 manufactures primarily Class II products, 3 manufacture primarily powder, and 2 have no primary product, only shipping to distributing plants. Three pool plants are manufacturing plants, manufacturing primarily cheese. Of the 50 nonpool plants in the Mideast marketing area, one is a supply plant that manufactures primarily cheese. The other 49 nonpool plants are manufacturing plants. In this area of high Class II use, 28 of the nonpool plants manufacture primarily Class II products. In addition, 1 manufactures primarily butter, 1 manufactures primarily powder, 27 manufacture primarily cheese, and 2 manufacture primarily other products.

There are also two manufacturing plants in the currently-unregulated area of Ohio—a nonpool plant that manufactures primarily Class II products in the unregulated county of Erie, Ohio and a nonpool plant that manufactures primarily cheese in the unregulated area of Sandusky, Ohio.

Cooperative Associations

In December 1997, 20 cooperative associations pooled member milk under the 5 orders to be consolidated (considering Milk Marketing, Inc., and Mid-America Dairymen, Inc., as one entity—DFA). Two of the cooperatives pooled milk on the four principal orders, 3 cooperatives had member milk pooled on 3 of the principal orders, 3 cooperatives pooled milk on 2 of the principal orders, and 12 of the cooperatives pooled milk on only one of the orders. The percentage of cooperative member milk pooled on each of the orders varied from 44 percent under Order 36 to 86.5 percent under Order 40. Of the total milk pooled on the 5 orders in December 1997, 68 percent was marketed by cooperative associations.

Criteria for Consolidation

Overlapping route disposition, overlapping production areas, natural boundaries, and multiple component pricing are all criteria that support the consolidation of these current order areas into a consolidated Mideast marketing area. Handlers who would be fully regulated under the consolidated order distribute approximately 90 percent of their route dispositions within the consolidated marketing area, and 93 percent of the milk distributed within the marketing area is from handlers who would be regulated under the order.

Many of the counties from which milk was pooled on the individual orders supplied milk to three or four of those orders. For instance, milk from a number of the same Michigan counties was pooled on the Ohio Valley, Indiana and Southern Michigan orders; milk from several of the same Indiana counties was pooled on the Ohio Valley, Southern Michigan and Indiana counties; and milk from some of the same Ohio counties was pooled on the Ohio Valley, Indiana, and Southern Michigan orders.

The Great Lakes serve as natural boundaries on the northern edge of the area and on the eastern and western sides of Michigan, as do the mountains in central Pennsylvania. All of the orders involved in the consolidated Mideast area contain multiple component pricing provisions. Instead of the Southern Michigan component pricing plan, proposed for the consolidated Mideast order in the proposed rule, the same component pricing provisions adopted for the other consolidated orders have been incorporated in the Mideast order.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, Indiana, and partial Michigan Upper Peninsula marketing areas that were considered included the addition of Pennsylvania Milk Marketing Board (PMMB) Area 6 to the consolidated Mideast area, with some consideration being given to the addition of currently-unregulated areas of Maryland and West Virginia, and moving the southern part of Ohio and part of West Virginia to the Appalachian order area.

Ten comments that pertained specifically to the consolidated Mideast marketing area were filed by 8

commenters in response to the proposed rule. Three of the comments, from Michigan Milk Producers Association, United Dairy, Inc., and DFA, plus a very large number of comments that did not specifically mention the Mideast area, addressed the inclusion of unregulated areas in consolidated Federal order areas. The DFA comment included the signatures of 600 producers to a ''Petition to Eliminate all Unregulated Market Areas in Pennsylvania.'' Although the large number of comments that did not specifically mention the Mideast area were unclear about exactly what additional area should be added to the marketing area, they appeared to favor the addition of PMMB Area 6, with perhaps some western Maryland and West Virginia territory, to the eastern edge of the Mideast area.

As stated in the introduction to the consolidation discussion, consolidation of the existing orders does not necessitate expansion of the consolidated orders into currently-unregulated areas, especially if such expansion would result in the regulation of currently-unregulated handlers. Therefore, PMMB Area 6 and the unregulated portions of Maryland and West Virginia should not be added to the consolidated Mideast order area.

Two comments from DFA recommended including Charleston, West Virginia, and areas of West Virginia south of Charleston, as well as the Ohio counties surrounding Cincinnati and the northern counties of Kentucky, in the Appalachian market to help provide an economic incentive through the expected higher blend prices to producers to supply milk to the plants in that area. A comment by Trauth Dairy in Newport, Kentucky, also urged the inclusion of the northern areas of Kentucky in the Appalachian area instead of the Mideast area. These comments are addressed in the description of comments and alternatives considered for the Appalachian order area.

Schneider's Dairy suggested that a pass-through provision similar to that of the current New York-New Jersey order be incorporated in the Mideast order to assure that regulated handlers distributing fluid milk products in unregulated areas where they compete with unregulated handlers are not disadvantaged. As discussed in the section of this decision dealing with Northeast regional issues, Class I prices are determined by the need to attract milk supplies to the location of the processing plant, and not by where the fluid products are distributed. Therefore, a pass-through provision is not incorporated in either the Northeast order or this order.

Independent Cooperative Milk Producers Association and Schneider's Dairy supported the consolidation of order areas to form the Mideast area as proposed.

Upper Midwest

The consolidated Upper Midwest marketing area is comprised of the current Upper Midwest (Order 68) and Chicago Regional (Order 30) marketing areas, with the addition of the western portion of the Michigan Upper Peninsula (Order 44) marketing area. There are 204 counties in this consolidated area. One partial Illinois county proposed to be part of the Central order area has been added to this area, and another partial Illinois county proposed to be part of this area has been changed to the Central order area.

Geography

The consolidated Upper Midwest marketing area is described geographically as follows: 15 counties in Illinois (all currently in Order 30), 6 counties in Iowa (all currently in Order 68), 6 counties in Michigan (all currently in Zones I and IA of Order 44), 83 counties in Minnesota (all currently in Order 68), 16 counties in North Dakota (all currently in Order 68), 8 counties in South Dakota (all currently in Order 68), and 70 counties in Wisconsin (43 currently in Order 30, 20 currently in Order 68, and 7 currently unregulated). This market is about 600 miles east to west and about the same distance north to south.

The area described above is contiguous to the consolidated Central market to the south, a small corner of the consolidated Mideast market to the southeast, and the eastern portion of Michigan's Upper Peninsula, also part of the consolidated Mideast market, to the northeast. North of the Upper Midwest market is Lake Superior and the Canadian border, and west of the market is a large sparsely-populated and unregulated area. Most of the eastern border of the marketing area is Lake Michigan.

The consolidated Upper Midwest marketing area is generally low-lying, with some local differences in elevation in Wisconsin and the upper peninsula of Michigan. Natural vegetation in the western part of the area is tall-grass prairie, with the eastern two-thirds of the northern portion being broadleaf forest, coniferous forest, and mixed broadleaf and coniferous forest. Annual precipitation averages 30–35 inches per year. Most of the area experiences summer temperatures that average about 75 degrees; the northern and western portions average winter temperatures are in the low 'teens, while the southern and more eastern portions experience average winter temperatures in the 20's. The far western part of the market predominantly grows mixed field crops, with cattle and soybeans more to the southwest. Both Minnesota and Wisconsin are included in the top five milk-producing states, and dairy is the number 1 agricultural enterprise in Wisconsin, generating over half of the State's income derived from agricultural commodities.

Population

According to July 1, 1997, population estimates, the total population of the consolidated Upper Midwest marketing area is approximately 18.5 million. Using Metropolitan Statistical Areas (MSAs), there are 3 population centers over 1 million. The Chicago-Gary-Kenosha area, primarily in northeastern Illinois, is the largest, with a 7.9 million population in the marketing area. The Minneapolis-St. Paul area, located mostly in Minnesota, is next with 2.8 million; and the third-largest MSA is Milwaukee-Racine, Wisconsin, with a population of 1.6 million. The Chicago area is located in the southeast corner of the marketing area, on the west side of the southern end of Lake Michigan, with Milwaukee approximately 85 miles north, also along Lake Michigan. Minneapolis is located 400 miles northwest of Chicago, along the Minnesota-Wisconsin border.

Approximately two-thirds of the population of the consolidated marketing area is within the three largest MSAs, with 81 percent of the population contained within the area's 17 MSA's (with the 14 smaller MSAs averaging 196,000 population).

Sixty percent of the population of the market is concentrated in the Illinois and southeast Wisconsin portion of the marketing area. In Wisconsin, nearly 90 percent of the population is located in the southern two-thirds of the state, and in Minnesota 85 percent of the population is in the southern half of the state.

Fluid Per Capita Consumption

Based on the population figure of 18.5 million and an estimated per capita fluid milk consumption rate of 20 pounds of fluid milk per month, total fluid milk consumption in the consolidated Upper Midwest marketing area is estimated at 370 million pounds per month. Plants that would be fully regulated distributing plants under the Upper Midwest order had route

disposition within the market of 343 million pounds in October 1997. Handlers fully regulated under other Federal orders distributed 43 million pounds in the consolidated marketing area during October 1997, while partially regulated plants distributed 1.7 million pounds. Producer-handlers and exempt plants operating in the combined marketing areas during this month had a combined route disposition of less than .5 million pounds.

Milk Production

In October 1997, 2.4 billion pounds of milk were associated with the Chicago Regional and Upper Midwest markets, but only 1.6 billion pounds of milk were pooled because of class price relationships. The 2.4 billion pounds were produced by 27,250 producers located in 13 states from Tennessee to Minnesota, and from New Mexico to Michigan. However, over 93 percent of the producer milk was produced within the consolidated marketing area, and 91.4 percent was produced within the states of Wisconsin and Minnesota. As with population density and milk plant density, most milk production in Minnesota and Wisconsin occurs in the southern parts of these states. Over 85 percent of Wisconsin milk associated with the combined Chicago Regional-Upper Midwest orders in October 1997 was produced in the southern two-thirds of the State, while 84 percent of the Minnesota milk associated with the two orders was produced in the southern half of Minnesota.

Fifty-two counties, 10 in Iowa, 15 in Minnesota, and 27 in Wisconsin supplied milk to both the current Chicago Regional and Upper Midwest orders during October 1997. The largest part of the common production area is in Wisconsin, where 27 counties supply 25 percent of the milk associated with Order 30, and 30 percent of the milk associated with Order 68. When data for the 52 counties is combined, 26 percent of the Chicago Regional market and 42 percent of the Upper Midwest market is supplied by this common production area.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 35 distributing plants would be expected to be associated with the Upper Midwest marketing area, including 27 fully regulated distributing plants (2 currently partially regulated and 25 currently pool plants), 4 partially regulated (3 currently partially regulated and 1 currently fully regulated), 1 producer-handler, and 3 exempt plants, based on distributing less than 150,000 pounds of total route disposition per month (1 new, 1 currently partially regulated, and 1 currently unregulated). Since October 1997, one pool distributing plant and one partially regulated plant have gone out of business.

There would be 6 distributing plants in the Chicago area (5 pool plants and 1 exempt plant). The Milwaukee-Racine area would have 2 pool distributing plants. There would be 7 distributing plants in the Minneapolis-St. Paul area (6 pool plants and 1 partially regulated plant). Of the remaining 20 distributing plants, 16 are located in other MSAs as follows: 4 pool plants in Minnesota, 2 pool plants and 2 partially regulated plants in North Dakota, 1 pool plant in Illinois, and 5 pool plants, 1 partially regulated plant, and 1 exempt plant in Wisconsin. Four of the remaining distributing plants are not located in MSAs: 1 pool plant and 1 exempt plant in Minnesota, 1 producer-handler in Wisconsin and 1 pool plant in Michigan.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Upper Midwest order, the Class I utilization percentages for the Chicago Regional and Upper Midwest were 29 and 19 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Upper Midwest order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Chicago Regional, a 3-cent per cwt decrease (from $12.98 to $12.95), and Upper Midwest, a 2-cent per cwt increase (from $12.89 to $12.91). The weighted average use value for the consolidated Upper Midwest market, based on October 1997 data, is estimated to be $12.94 per hundredweight. However, a substantial amount of milk was omitted from both pools for October 1997 because of unusual class price relationships. Annual Class I utilization percentages may be considered more representative for these markets. For the year 1997, the annual Class I utilization percentage for the Chicago Regional market was 21.5, with 18.7 for the Upper Midwest. The Class I use percentage for the entire Michigan Upper Peninsula market, which has a individual handler pool and represents a very small portion of the producer milk that would be expected to be pooled under the consolidated Upper Midwest order, was 89 percent. It is estimated that the Class I use percentage for the consolidated order would be in the neighborhood of 20 percent.

Other Plants

Located within the consolidated Upper Midwest marketing area during May 1997 were 301 supply or manufacturing plants: 1 in South Dakota, 3 in Iowa, 28 in Illinois (12 in the Chicago area), 39 in Minnesota (over three-quarters of which are located in the southeastern quarter of the State), and 230 in Wisconsin (over 90 percent of which are scattered throughout the southern three-quarters of the state). One hundred five of the plants are pool plants, or have a ''pool side.'' Eighty-five of the 105 pool plants (1 in Iowa, 4 in Illinois, 16 in Minnesota and 64 in Wisconsin) are ''split plants;'' that is, one side of a plant is a manufacturing facility and the other side receives and ships Grade A milk, and accounting is done separately. In most cases, the nonpool portion of such a plant is a manufacturing operation, primarily cheese-making. Most of the other pool plants are pool supply plants, located primarily in Wisconsin, that ship milk to pool distributing plants.

The 196 nonpool plants in the consolidated Upper Midwest marketing area are manufacturing plants—103 manufacture primarily cheese, 16 manufacture primarily Class II products, 15 manufacture primarily butter, 23 manufacture primarily milk powders, and 39 manufacture primarily other products.

Also associated with the Upper Midwest order, but not within the marketing area, are 2 pool supply plants and 6 manufacturing plants (3 manufacturing primarily cheese, 2 making Class II products, and 1 butter plant) in North Dakota.

Cooperative Associations

In December 1997, 67 cooperative associations pooled member milk on the Chicago Regional and Upper Midwest orders, providing 99 percent of the milk pooled under each of the two orders. Nine of the cooperatives marketed milk in both orders, accounting for nearly half of the milk pooled in the Upper Midwest (and 42.9 percent of the cooperative member milk), and 66.8 percent of the milk pooled in the Chicago Regional market (67.5 percent of total cooperative member milk). In the two markets, 16 cooperatives pooled milk only under Order 30, and 42

cooperatives pooled milk only under Order 68.

Criteria for Consolidation

As in the proposed rule, the Chicago Regional, Upper Midwest, and the western end of the Michigan Upper Peninsula marketing areas should be combined into a consolidated Upper Midwest Federal order marketing area. Although these areas do not have a considerable degree of overlapping fluid milk disposition, they do have an extensive overlapping procurement area. Handlers regulated under the Chicago Regional and Upper Midwest markets (the predominant markets in this consolidation) distribute milk into markets further south, and approximately 10 percent of the fluid milk distributed within the consolidated area is distributed by handlers regulated under other orders. However, these other orders are more closely related to markets to the south than to the consolidated Upper Midwest order area. On that basis, it is more appropriate to include them in other consolidated marketing areas.

Other aspects of the consolidation also fit the criteria set forth. The consolidated Upper Midwest area is bounded on three sides by Lakes Michigan and Superior, the international border with Canada, and a large unregulated area. A significant portion of both the Chicago Regional and Upper Midwest markets' milk is supplied by the same cooperative associations. The two predominant markets have identical multiple component pricing plans, and both have large reserves of milk that normally is used in manufactured products, primarily cheese. Approximately 90 percent of the milk used in manufacturing in these markets is used to make cheese. The amount of cheese manufactured from milk pooled under these milk orders is enough to supply a population 3 times greater than that of the consolidated marketing area. Fluid milk handlers in both markets must compete with cheese manufacturers for a milk supply, and marketing order provisions for both markets must provide for attracting an adequate supply of milk for fluid use.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the order areas included in the Upper Midwest marketing area that were considered included combining the Iowa, Nebraska-Western Iowa, and Eastern South Dakota order areas with those of the Chicago Regional and Upper Midwest areas in a consolidated Upper Midwest order. Also considered was a consolidation of even more marketing areas (up to 10; including Indiana, Illinois, parts of Kentucky, Missouri, and Kansas) that would increase the population and Class I use of the consolidated Upper Midwest area.

Over 160 comments received in response to the proposed rule concerned the proposed consolidated Upper Midwest marketing area. Nearly 140 of these comments (including approximately 120 form letters) supported a consolidation of 10 marketing areas for the purpose of increasing the Class I utilization of the consolidated Upper Midwest order area to a level closer to the U.S. national average or, at the very least, including the Iowa, Eastern South Dakota, and Nebraska-Western Iowa marketing areas in the consolidated Upper Midwest area.

No justification on the basis of the criteria of overlapping sales and procurement areas could be found for any increase in a consolidated marketing area that would be comprised of the Chicago Regional and Upper Midwest order areas beyond the addition of the Iowa, Eastern South Dakota, and Nebraska-Western Iowa marketing areas. The collection of more detailed data concerning the overlap in route disposition and milk procurement showed clearly that those three areas are more closely related to markets to the south than to the north, with approximately 85 percent of the total fluid milk distributed by handlers regulated under the three orders disposed of in the consolidated Central market.

The numerous markets recommended by upper midwest producer groups to be consolidated with the Chicago Regional and Upper Midwest order areas have very little distribution or procurement overlap with those areas, aside from occasional need for reserve milk supplies. When reserve supplies are needed by the other markets, upper midwest milk can be, and is, pooled on the more southern markets and shares in their pools. The potential gain of adding areas recommended by upper midwest producer groups would be much less than the loss to producers whose milk is pooled under orders to be consolidated in the Central, Mideast and Appalachian marketing areas.

Approximately 10 comments, including some from cooperative associations representing large numbers of producers, advocated the addition of the northeast portion of the Iowa marketing area to the consolidated Upper Midwest area based on the extensive overlap of producers, Class I sales, and geographic similarities between that area and the adjoining consolidated Upper Midwest area. An equivalent number of comments, most from Iowa interests, argued that the consolidated Upper Midwest order should remain as proposed. This issue is more fully discussed in the ''Comments and Alternatives'' section of the description of the Central order area, as is the assignment to consolidated areas of 3 counties, each in its entirety, that currently are split between orders.

One comment advocated the addition of the Gary, Indiana, area to the consolidated Upper Midwest area instead of the Mideast area on the basis that Gary, Indiana, is part of the greater Chicago market. This portion of the current Indiana order area historically has been part of the Indiana marketing area, and there is no data supporting its separation from that area. The single pool distributing plant located in Gary has ceased to process milk. Any distribution in the Gary area acquired by Chicago handlers as a result will be pooled as Class I use under the consolidated Upper Midwest order.

Based on the considerations of the most recent data available, comments received, and the stated consolidation criteria, limiting the extent of the consolidated Upper Midwest marketing area to the areas of the current Chicago Regional and Upper Midwest marketing areas, with the addition of the western part of the Michigan Upper Peninsula marketing area, represents the most appropriate marketing area configuration for the north central area of the U.S.

Central

The consolidated Central order marketing area merges the current 9 Federal order marketing areas of Central Illinois, most of Southern Illinois-Eastern Missouri, most of Southwest Plains, Greater Kansas City, Iowa, Eastern South Dakota, Nebraska-Western Iowa, Western Colorado, and Eastern Colorado (Federal orders 50, 32, 106, 64, 79, 76, 65, 134, and 137, respectively). Moving to the consolidated Southeast marketing area are 6 Missouri counties currently in Federal order 32 and, from Order 106, 11 northwest Arkansas counties and 22 southern Missouri counties. Order 106 counties in Kansas and Oklahoma remain in the Central market. In addition, some counties in Colorado, Illinois, Iowa, Kansas, Missouri and Nebraska that currently are not part of any order area are included in the consolidated Central market. There are 543 counties and the City of St. Louis,

Missouri, in this consolidated area. The marketing area has changed from the proposed rule by the addition of the Western Colorado marketing area and seven currently-unregulated Colorado counties, the elimination of 6 currently-unregulated Missouri counties, the addition of two partial counties and the deletion of one partial county for the purpose of eliminating the inclusion of partial counties.

Geography

The consolidated Central marketing area would include the following territory:

Colorado—44 counties, including the 30 Colorado counties currently in the Eastern Colorado marketing area and the 4 Colorado counties in the Western Colorado marketing area. Ten currently-unregulated counties, 3 in the southeast corner of the state between the Eastern Colorado and Southwest Plains marketing areas, and 7 in the central part of the State between the Eastern Colorado and Western Colorado marketing areas, are added.

Illinois—87 counties, including the 5 of the 6 counties currently in the Iowa marketing area (of the 2 partial Illinois counties in the Iowa marketing area, all of Whiteside and none of Jo Daviess are included in the Central area), the 19 counties currently in the Central Illinois marketing area, the 49 counties currently in the Southern Illinois-Eastern Missouri marketing area and 8 currently-unregulated adjacent counties in southern Illinois, and 6 currently-unregulated counties in western Illinois located between the current Central Illinois and Southern Illinois-Eastern Missouri order areas and the Mississippi River.

Iowa—93 counties, including the 68 counties currently in the Iowa marketing area, the 17 counties currently in the Nebraska-Western Iowa marketing area, the 1 county currently in the Eastern South Dakota marketing area, 6 currently unregulated counties in the northwestern part of Iowa, and 1 currently unregulated county in the southeastern corner of Iowa.

Kansas—the entire State (105 counties).

Minnesota—the 4 southwestern Minnesota counties that currently are in the Eastern South Dakota marketing area.

Missouri—39 counties and 1 city, including 6 of the counties and 1 city that currently are in the Southern Illinois-Eastern Missouri marketing area, the 20 counties that currently are in the Greater Kansas City marketing area, the 5 counties that currently are in the Iowa marketing area; and 8 currently-unregulated counties distributed around the center area proposed to remain unregulated.

Nebraska—66 counties in the southern and eastern parts of Nebraska; omitting the 11 counties in the panhandle that currently are part of the Nebraska-Western Iowa marketing area, and adding 5 currently-unregulated counties in the southwest corner of the State between the Nebraska-Western Iowa and Eastern Colorado marketing areas and 3 currently-unregulated counties in the southeast corner of the State between the Nebraska-Western Iowa and Greater Kansas City marketing areas.

Oklahoma—the entire State (77 counties).

South Dakota—the 26 eastern South Dakota counties (including the portion of Union County that currently is in the Nebraska-Western Iowa marketing area) that currently are in the Eastern South Dakota marketing area.

Wisconsin—the 2 southwest Wisconsin counties that currently are in the Iowa marketing area.

The consolidated Central marketing area is adjacent to the consolidated Upper Midwest order area on the north and northeast, the consolidated Mideast and Appalachian areas on the east, and the northwest corner of the Southeast order area and the consolidated Southwest area on the south and the consolidated Western order area on the west. The area north of approximately the western half of the consolidated Central area also is unregulated. The north-south distance covered by the area is approximately 800 miles, from Watertown, South Dakota, to Ardmore, Oklahoma. The east-west extent of the area, from the Indiana-Illinois border to the Colorado/Utah border, is approximately 1,200 miles.

Geographically, the Central marketing area includes a wide range of topography and climate types, ranging from the Colorado Plateau and the Rocky Mountains in the west to the central section of the Mississippi River Valley toward the eastern part of the area. Precipitation ranges from less than 15 inches per year in Denver, Colorado, to more than 30 inches at St. Louis, Missouri. Most of the area experiences fairly hot summer temperatures, while winter temperatures vary somewhat more than summer, with colder winter temperatures occurring in the northern and western parts of the Central area. The natural vegetation ranges from desert and desert scrub in western Colorado through coniferous forest in the Rocky Mountains to short grass prairie in eastern Colorado through tall grass prairie in eastern South Dakota, Nebraska, Kansas and Oklahoma, and much of Illinois; to broadleaf forest on both sides of the Mississippi River.

Population

According to July 1, 1997, population estimates, the total population in the consolidated Central marketing area is approximately 21.5 million. Using Metropolitan Statistical Areas (MSAs), there are four population centers over 1 million. The St. Louis, Missouri/Illinois, area is the largest, with over 2.6 million population, and the Denver-Boulder-Greeley, Colorado, area is next with approximately 2.3 million. Kansas City, Missouri/Kansas, has a population of 1.7 million, and Oklahoma City, Oklahoma, is just over 1 million. Approximately thirty-five percent of the population of the consolidated marketing area is within these four largest MSAs, with nearly two-thirds of the population contained within the area's 32 MSA's (with the 28 smaller MSAs averaging 228,559 population). The Colorado portion of the marketing area has 91.3 percent of its population concentrated in 5 MSA's. The Missouri portion has 94.4 percent concentrated in 3 MSA's.

Fluid Per Capita Consumption

Based on the population figure of 21.5 million and a per capita fluid milk consumption rate of 19 pounds of fluid milk per month (a weighted average based on state populations in the marketing area and fluid per capita consumption estimates for each state), total fluid milk consumption in the consolidated Central marketing area would be approximately 408.5 million pounds per month. Plants that would be fully regulated distributing plants in the Central order had route disposition within the nine marketing areas included in the consolidated Central area of 366 million in October 1997. It is likely that most of the milk distributed within formerly unregulated areas by Central order handlers would be distributed within the consolidated Central marketing area. The 11 producer-handlers and 3 exempt plants operating in the Central market during October 1997 had a combined in-area route disposition of 3 million pounds, partially regulated plants distributed 2 million pounds in the marketing area, and plants that are expected to be fully regulated under other consolidated orders distributed 59 million pounds in the Central marketing area during October 1997.

Milk Production

In October 1997, 996.7 million pounds of milk were associated with the

orders consolidated in the Central market (including all of the milk pooled under Orders 32 and 106). However, because of class price relationships in the Iowa and Nebraska-Western Iowa markets, only 893.2 million pounds of the milk was pooled. The 996.7 million pounds were produced by 9,900 producers located in 17 states from Idaho to Kentucky, and from Texas to Minnesota. Three-quarters of the milk associated with the Central market was produced within the consolidated marketing area. The states contributing the most producer milk were, in descending order of volume, Iowa, Colorado, Missouri, Kansas, Illinois and Oklahoma. However, 68 percent of the Missouri producer milk came from farms in counties which are included in the consolidated Southeast marketing area. These 6 States accounted for 71 percent of the producer milk associated with the nine current orders to be consolidated. All of the states having substantial portions of their areas in the consolidated Central market contribute producer milk to at least two of the current nine individual orders, with five of the states (Iowa, Kansas, Minnesota, Missouri, and Nebraska) supplying milk to five of the order areas each.

Distributing Plants

Using distributing plant lists included in the proposed rule and the pooling standards adjusted to 25 percent of route dispositions as in-area sales, updated for known plant closures through December 1998, 57 distributing plants would be expected to be associated with the Central marketing area, including 35 fully regulated distributing plants (all currently pool plants), 1 partially regulated (currently partially regulated), 3 plants exempt on the basis of size (currently pool plants but have less than 150,000 pounds of total route disposition per month), 13 producer-handlers (all currently producer-handlers), 1 unregulated plant (located in the unregulated central portion of Missouri), and 4 government agency plants (all currently government agency plants). Since October 1997, it is known that 1 pool distributing plant (in Illinois) and 1 partially regulated plant (in Wyoming) have gone out of business.

There would be 10 distributing plants in the Denver area (7 pool plants and 3 producer-handlers). The Kansas City area would have 1 pool distributing plant. The St. Louis area would have 6 distributing plants (4 pool plants, 1 exempt plant, and one producer-handler). There would be 1 pool distributing plant and 2 producer-handlers in the Oklahoma City area. Of the remaining 37 distributing plants, 19 are located in other MSAs as follows: 1 pool plant, 1 exempt plant (on the basis of size) and 1 producer-handler in Colorado; 1 pool plant in Illinois; 4 pool plants, 1 producer-handler and 1 exempt plant in Iowa; 1 pool plant in Kansas; 3 pool plants in Nebraska; 1 pool plant and 1 producer-handler in Oklahoma; 1 pool plant and 1 partially regulated plant in South Dakota, and 1 pool plant in Wyoming.

Eighteen of the remaining distributing plants are not located in MSAs. They are: 1 pool plant and 1 government agency plant in Colorado; 4 pool plants and 1 government agency plant in Illinois; 1 pool plant and 1 producer-handler in Iowa; 1 pool plant and 1 government agency plant in Kansas; 1 unregulated and 2 producer-handlers in Missouri; 1 producer-handler in Nebraska; 2 pool plants in Oklahoma; and 1 government agency plant in South Dakota.

Utilization

According to October 1997 pool statistics for handlers who would be fully regulated under this Central order, the Class I utilization percentages for the individual markets ranged from 38 percent for the Southwest Plains market to 87 percent for the Central Illinois market. Class I (and Class II) receipts and utilization data for Iowa and the combination of Greater Kansas City and Eastern South Dakota markets are restricted to protect the confidentiality of individual handler information. Data for Eastern Colorado and Western Colorado markets are combined in order to mask restricted data. Combined utilization for the nine markets would result in a Class I percentage of 50 percent.

Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Central order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Southern Illinois-Eastern Missouri, a 27-cent per cwt decrease (from $13.49 to $13.22); Central Illinois, a 50-cent per cwt decrease (from $13.56 to $13.06); Greater Kansas City, a 69-cent per cwt decrease (from $13.91 to $13.22); Nebraska-Western Iowa, a 10-cent decrease (from $13.23 to $13.13); Eastern South Dakota, a 32-cent decrease (from $13.33 to $13.01); Iowa, a 5-cent decrease (from $13.08 to $13.03); Southwest Plains, a 70-cent increase (from $12.94 to $13.64); Western Colorado, a 65-cent decrease (from $13.88 to $13.23); and Eastern Colorado, an 11-cent decrease (from $13.70 to $13.59). The weighted average use value for the consolidated Central order market is estimated to be $13.29 per cwt.

Other Plants

Located within the Central marketing area during May 1997 were 84 supply or manufacturing plants: 8 in Colorado (4 in the Denver area), 15 in Illinois (2 in the Decatur area), 23 in Iowa (2 in the Des Moines area and 1 in the Dubuque area), 6 in Kansas, 7 in Missouri (5 in the St. Louis area), 7 in Nebraska, 7 in South Dakota (1 in the Sioux Falls area), 4 in Oklahoma (1 in the Tulsa area), and 7 in Wisconsin. Twenty-two of the 84 plants are pool plants, or have a ''pool side.'' Twelve of the 22 pool plants (6 in Iowa, 1 in Nebraska, 2 in South Dakota, and 3 in Wisconsin) are ''split plants;'' that is, one side of a plant is a manufacturing facility, and the other side receives and ships Grade A milk, and accounting is done separately. In most cases, the nonpool portion of such a plant is a manufacturing peration, primarily cheese-making. Of the pool plants, 8 have no primary product, but are only shipping to distributing plants, and 6 are pooled manufacturing plants.

Of the 62 nonpool plants in the consolidated Central marketing area, 59 are manufacturing plants—24 are plants that manufacture primarily Class II products, 3 manufacture primarily butter, 6 manufacture primarily powder, 25 manufacture primarily cheese, and 1 manufactures primarily other products.

Also associated with the consolidated Central order, but not within the marketing area, are 2 nonpool cheese plants and a nonpool supply plant located in South Dakota.

Cooperative Associations

Twenty-five cooperative associations pooled milk in December 1997 under the nine orders consolidated in the Central market. Of these cooperatives, 1 pooled milk under 7 of the orders, 5 cooperatives associated producer milk with 3 orders each, and 2 others pooled milk under 2 orders each. Seventeen of the 25 cooperatives pooled milk under only one order, and for 10 of these organizations that was the Iowa order.

The percentage of cooperative milk pooled under the eight orders was 95, with a range of 80.7 percent cooperative milk under the Southwest Plains order to 100 percent cooperative member milk under the Central Illinois, Greater Kansas City and Eastern South Dakota orders.

Criteria for Consolidation

Most of the criteria used in determining the optimum consolidation

of order areas apply to the Central marketing area. The Federal order markets consolidated in the Central area are strongly related to each other through overlapping route disposition. The great majority of sales by handlers who would be regulated under the consolidated Central order are distributed within the marketing area, and the consolidated markets have a greater relationship in terms of overlapping sales areas than with any other markets. In addition, sales within the currently-unregulated areas included in the consolidated Central area are overwhelmingly from handlers that would be pooled under the Central order. Inclusion of these areas would reduce handlers' burden of reporting out-of-area sales and take in pockets of currently-unregulated counties that occur between the current order areas. As discussed above, the milk procurement areas for the consolidated markets also have a significant degree of overlap.

The Western Colorado order is included because the more recent data collected for this final decision indicates that since the proposed rule the Western Colorado marketing area has developed a closer relationship with the Eastern Colorado market than with any other market, even across the Continental Divide. A benefit of combining Western Colorado with other markets is that it is a small market where data cannot be released without revealing confidential information unless combined with data pertaining to another marketing area. Consolidation of the area will allow publication of meaningful statistics without disclosing proprietary information. In addition, several comments supported the combination of the Western Colorado area with the consolidated Central market in view of the large negative effect of lower producer pay prices on the small number of producers involved if the Western Colorado area were consolidated with the Southwestern Idaho-Eastern Oregon and Great Basin marketing areas.

Some of the currently-unregulated counties in western Illinois and central Missouri have been added to the Central marketing area. The omission from the marketing area of the counties in central Missouri that are not included in the consolidated Central marketing area are based on an estimation of the marketing area of Central Dairy, located in Jefferson City, Missouri. This handler has not been previously regulated. As discussed earlier, it is not the intent of this decision to include currently-unregulated area in the consolidated order areas where such inclusion would have the effect of regulating previously-unregulated handlers.

An additional benefit of the consolidation of these nine order areas is that data will be able to be made public without disclosing proprietary information. Four of the current Federal order markets (Central Illinois, Greater Kansas City, Eastern South Dakota, and Western Colorado) included in this consolidated area have too few pool plants to be able to publish market data without revealing confidential information. In addition to these three markets, the number of handlers regulated under each of the Nebraska-Western Iowa, Iowa and Eastern Colorado orders is in the single digits.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the order areas included in the Central marketing area that were considered included combining the Iowa, Nebraska-Western Iowa, and Eastern South Dakota order areas with those of the Chicago Regional and Upper Midwest areas in a consolidated Upper Midwest order. The collection of more detailed data concerning the overlap in route disposition and milk procurement showed clearly that these marketing areas are more closely related to markets to the south than to the north.

Approximately 85 percent of the total fluid milk dispositions distributed by handlers regulated under the three order areas that were suggested to be included in the Central area in the initial Preliminary Report, and in the Upper Midwest area in the Revised Preliminary Report, are disposed of in the consolidated Central market. The disposition by other Central marketing area handlers within the consolidated Central area is somewhat greater than the proportion for the three more northern order areas.

Also considered was the exclusion of 14 Nebraska counties, in addition to the 11 already excluded, from the Central marketing area to expand the unregulated area in which Gillette Dairy could distribute milk without becoming regulated. There was no data indicating that Gillette distributes milk in those counties. In the early stages of the study of appropriate order consolidation, it was assumed that the southern Missouri and northwest Arkansas portions of the Southwest Plains order area would remain with the rest of that area. This area was included with the consolidated Southeast order area in the proposed rule, and remains there.

Eighteen comments that pertained specifically to the proposed Central marketing area were filed by 17 commenters in response to the proposed rule. Four of these comments advocated moving the Western Colorado order area from the consolidated Western order to the consolidated Central order. These comments expressed concern about the expected reduction in the blend price to Western Colorado producers under the Western order. An examination of updated data on route dispositions and bulk milk movements resulted in making this change which is explained in greater detail in the description of comments and alternatives under the section of this decision dealing with the Western area.

A comment filed by the American Farm Bureau Federation recommended that the central area of Missouri that was proposed to be unregulated be included in the Central order area. A comment filed on behalf of Central Dairy, the handler who is located and distributes milk in the unregulated Missouri area opposed the addition of any presently unregulated territory to Federal order marketing areas, and specifically opposed the addition of six currently-unregulated northeast Missouri counties into which the handler expects to expand its distribution.

There is no intention of causing the regulation of this handler. As discussed earlier with regard to the Northeast and Mideast marketing areas, consolidation of the existing orders does not necessitate expansion of the consolidated orders into currently-unregulated areas, especially if such expansion would result in the regulation of currently-unregulated handlers. At the same time, minimizing the extent of the unregulated counties in the middle of the consolidated marketing area would help to reduce the reporting burden on handlers in determining which route dispositions are inside, and which are outside the marketing area. The administrative burden of verifying such reporting also would be eliminated. Six currently-unregulated northeast Missouri counties that were proposed to be added to the Central order area have been removed on the basis of comments received from the Jefferson City handler, who indicated that regulation of the six counties may result in a change in the handler's regulatory status. No urgency on the part of regulated handlers having sales in the unregulated area to include that area in the consolidated order area was apparent from comments. In fact, none of the comments received from affected handlers advocated that the unregulated area be included in the consolidated area.

A comment by Gillette Dairy, a handler located in Rapid City, South Dakota, in the former Black Hills Federal order area, supported excluding the 11 counties of the Nebraska panhandle, currently part of the Nebraska-Western Iowa order area, from the consolidated Central area. Gillette has some sales in this area and competes there with regulated handlers, but requested that the panhandle area be excluded to lessen Gillette's likelihood of becoming fully regulated under the Central order. This area was excluded in the proposed rule, and its exclusion was unopposed by any interested persons who filed comments before the deadline for doing so. Although Gillette's sales in the panhandle area do not represent an overwhelming majority of the total sales there, the volume of sales in this sparsely-populated area should not affect the competitive status of any regulated handlers. Therefore, the area will be excluded from the consolidated area as proposed.

Several comments, from the Iowa Department of Agriculture, Wells' Dairy, and Anderson-Erickson Dairy, as well as Swiss Valley Farms, supported the inclusion of the Iowa order area in the consolidated Central area, stating that the attraction of a supply of milk for fluid needs requires such a consolidation.

Comments were received on dividing the current Iowa marketing area by adding the eastern edge of the Iowa marketing area to the proposed consolidated Upper Midwest order. Such a division would result in the Swiss Valley Farms distributing plant in Dubuque, Iowa, qualifying as a pool plant under the consolidated Upper Midwest order (as it now does during some months under the current Chicago Regional order). The Swiss Valley plant comprises a large majority of the Iowa market sales in the Chicago Regional and Upper Midwest order areas, and the movement of a half-dozen counties would assure its pool status in the consolidated Upper Midwest order and its location in that order area.

Comments by Lakeshore Federated Dairy Cooperative argued that the extensive overlap of producers, Class I sales, and geographic similarities between the northeast portion of the Iowa marketing area and the adjoining consolidated Upper Midwest area should be considered compelling reasons for making such a change. Lakeshore's comments were supported by Prairie Farms, Foremost Farms, and DFA. In addition, Grande Cheese Company, a Wisconsin cheesemaker, filed comments supporting Lakeshore's position.

In its comments, Swiss Valley argued that the 2 southwest Wisconsin counties proposed to be included in the consolidated Central marketing area were removed from the Chicago Regional area and added to the Iowa area on the basis of a formal rulemaking proceeding in the late 1980's, at which time it was determined that the principal competition for fluid sales and milk supply in this area occurred between Iowa handlers rather than with Chicago Regional handlers. It is therefore Swiss Valley's position that the two counties should remain with the rest of the Iowa area, in the consolidated Central marketing area.

On the basis of data gathered for this decision, the primary source of route disposition in Grant and Crawford Counties, Wisconsin, and Dubuque County, Iowa, is the Swiss Valley plant in Dubuque, and most of the rest of the milk distributed in these counties is from handlers regulated under the Chicago Regional order. The data also shows that the Dubuque plant procures most of its milk supply from counties that also supply milk to the Chicago Regional and Upper Midwest orders, as well as to other plants pooled under the Iowa order.

One of the problems in this marketing area has been the ability of the Swiss Valley plant to choose the order under which it is regulated. As a result of differences between the current pool plant definitions of the two orders, Swiss Valley has been able to switch regulation between the Iowa and Chicago Regional orders as its price advantage shifted, and has done so frequently during 1997 and 1998. The pool plant definitions of the consolidated Upper Midwest and Central orders, which are very similar, will require that the Swiss Valley plant be regulated under the order for the area in which it has the greater volume of route disposition.

If, under the consolidated orders, the Dubuque plant distributes a greater share of its sales in the consolidated Upper Midwest area than in the consolidated Central area, the plant will be pooled under the Upper Midwest order. The only appropriate change to be made to the current Iowa marketing area is to eliminate the partial counties from the marketing area definitions of the consolidated Central and Upper Midwest orders.

The Illinois Counties of Jo Daviess and Whiteside currently are split between the Iowa and Chicago Regional order areas. More than half of the sales in Whiteside County are supplied by Iowa handlers (including Swiss Valley), so Whiteside County will be located entirely within the consolidated Central area. More than half of the sales in Jo Daviess County are supplied by Chicago Regional handlers (not including Swiss Valley), and that county will be located entirely within the consolidated Upper Midwest area. The Iowa County of Mitchell currently is located in the Upper Midwest area except for the City of Osage, which is defined as part of the current Iowa marketing area. All of Mitchell County will be included in the consolidated Upper Midwest area.

After considering all comments and other relevant information, it is determined that the territory encompassed in the Central marketing area best meets the criteria used.

Southwest

The consolidated Southwest marketing area is comprised of the current Texas (Order 126) and New Mexico-West Texas (Order 138) marketing areas as well as 49 currently unregulated Texas counties. There are 290 counties in this area. This area remains unchanged from the proposed rule.

Geography

The consolidated Southwest market is described geographically as follows: three counties in Colorado (currently in Order 138), all New Mexico counties (33, currently in Order 138) and all 254 Texas counties (162 currently in Order 126, 43 currently in Order 138, and 49 currently unregulated). Two currently unregulated counties are located in northeast Texas, while the remaining 47 are in southwest Texas.

The Southwest market spans the south central area of the United States. It is surrounded by Arizona on the west, Colorado and Oklahoma on the north, Arkansas, Louisiana and the Gulf of Mexico in the northeast, east, and southeast, and Mexico to the south. Measuring the extreme dimensions, this market extends about 800 miles north to south from southern to northern Texas and about 875 miles east to west from Texas' border with Louisiana and Arkansas to New Mexico's border with Arizona.

The Southwest market is contiguous to 3 consolidated marketing areas: Arizona-Las Vegas to the west, Central to the north and Southeast to the east. Unregulated counties in Colorado also form a relatively small border in the northwest corner of the market. Texas has over 350 miles of coastline on the Gulf of Mexico, while Texas and New Mexico share about 970 miles of boundary with northern Mexico.

In terms of physical geography, diverse topographic relief exists in the

Southwest market area, particularly in New Mexico (ranging from deserts to high mountain ranges). Northwest New Mexico is part of the Colorado Plateau, an area of broad valleys and plains as well as deep canyons and mesas. The Rocky Mountains extend into the north central area of the state. The Basin and Range region, generally characterized by ranges or isolated mountains interspersed with valleys, desert basins or high plains, is located in central and southwestern New Mexico, as well as western Texas. The Great Plains cover the eastern third of New Mexico and extend through the Texas Panhandle in north Texas and much of central Texas. This area is characteristically dry and treeless and also encompasses Texas hill country and the Edwards Plateau. The Osage Plains covers the area in Texas from the Oklahoma-Texas border into the south central part of the state and the low and flat West Gulf Coastal Plain covers the eastern two-fifths of the state.

Climates in this region also vary. The western part of the region, including New Mexico, southwest Texas and the Texas Panhandle, is semi-arid to arid with wide ranges in both daily and annual temperatures. The southern tip of Texas and the Gulf coast are more humid and subtropical. For some of the area there are few agricultural uses other than dairy farming. Dairy products were the 2nd and 3rd highest revenue-producing agricultural commodities in New Mexico and Texas, respectively, in 1996, accounting for nearly one-third of agricultural receipts in New Mexico, but less than 10 percent in Texas.

Population

According to July 1, 1997, population estimates, the total population in the consolidated marketing area is 21.3 million. The 26 Metropolitan Statistical Areas (MSA) in the consolidated Southwest market account for 81.3 percent of the total market area population. About 55 percent of the Southwest population is located in the 4 most populous MSAs. Seven MSAs have populations greater than 500,000; their total population is 63.4 percent of the Southwest population. Because of the large number of MSAs in the Southwest market, only those areas with populations greater than 500,000 are described in detail.

Almost 92 percent of the Southwest market's population is located in Texas, which has 19.5 million people. Twenty-three of the 26 Southwest market MSAs are in Texas. About 66 percent of Texas' population is concentrated in 6 areas, which include the Southwest area's top 5 population centers: the Dallas-Fort Worth (Dallas) MSA in northeastern Texas, with a population of 4.7 million; the Houston-Galveston-Brazoria (Houston) MSA in southeastern Texas near the Gulf of Mexico, with a population of 4.3 million; the San Antonio MSA in south central Texas, with a population of 1.5 million; the Austin-San Marcos (Austin) MSA in central Texas, with a population of 1 million; the El Paso MSA located in the far western corner of Texas on the Texas-New Mexico-Mexico border, with a population of 702,000; and the McAllen-Pharr-Edinburg MSA located at the southern tip of Texas, with a population of 511,000.

New Mexico's population is about 1.7 million. The remaining 3 of the 26 Southwest market MSAs are located in New Mexico. About 40 percent of the state's population is located in the Albuquerque area, just northwest of central New Mexico.

In the remainder of the Southwest marketing area, the 3 Colorado counties have a population of about 71,000.

Fluid Per Capita Consumption

Estimates of fluid per capita consumption vary from 17.1 pounds of fluid milk per month per person in Texas to 17.5 in New Mexico to 18.8 in Colorado. Multiplying the individual states' consumption rate by its population in the consolidated marketing area results in a fluid milk consumption rate of 364.5 million pounds of fluid milk per month for the consolidated Southwest marketing area.

In October 1997, the fully regulated plants in Orders 126 and 138 had route distribution totaling 342.5 million pounds. Ninety-eight percent, or 328 million pounds, was distributed within the consolidated Southwest marketing area. Handlers fully regulated under other Federal orders had about 21 million pounds of route distribution into the Southwest market area. Producer-handlers in the Southwest area distributed about 5 million pounds of route distribution in the Southwest marketing area in October 1997, while partially-regulated plants and plants that would be exempt on the basis of size distributed approximately .5 million pounds.

Production

In October 1997, 1,570 producers from 144 counties in 5 states pooled 650 million pounds of producer milk on Orders 126 and 138. Over 99 percent of this producer milk came from counties included in the consolidated Southwest marketing area. About 55 percent of the combined market's producer milk was provided by producers in six counties.

About 455 million pounds of milk were pooled on either Order 126 or 138 from 1,345 producers in 118 Texas counties in October 1997. Three Texas counties were among the top 6 in volume pooled: Erath (1st), Hopkins (4th) and Comanche (6th). Erath County—located about 75 miles west of Dallas—pooled 104.5 million pounds on Order 126 (and an additional 9 million pounds on 3 other Federal orders). Hopkins County—located about 50 miles east of Dallas—pooled 34 million pounds on Order 126 and another 15 million pounds on 4 other Federal orders. Contiguous to and lying southwest of Erath County, Comanche County pooled 33 million pounds on Order 126 and about .5 million pounds on 3 other Federal orders.

Of the 271 million pounds of milk pooled on either Order 126 or 138 from 185 producers in 12 New Mexico counties, 69 percent was produced in the following three counties, all among the top 6 in volume pooled: Chaves (2nd), Dona Ana (3rd) and Roosevelt (5th). Chaves County—located about 200 miles southeast of Albuquerque—pooled 92 million pounds on Orders 126 and 138 in October 1997 and an additional 28 million pounds on 3 other Federal orders. Dona Ana County, located over 200 miles south of Albuquerque, contiguous to El Paso County, TX, and the U.S.-Mexico border, pooled 61 million pounds of producer milk on Order 138. Contiguous to and lying northeast of Chaves County, Roosevelt County pooled 33 million pounds on Orders 126 and 138 and another 6.6 million on 4 other Federal orders.

In October 1997, producer milk for Orders 126 and 138 also originated in one of the Colorado counties in the Southwest marketing area, and in counties in Arkansas and Oklahoma. However, the combined amount of producer milk pooled from these areas is less than 1 percent of the total producer milk pooled in these Orders.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 31 distributing plants located in the consolidated Southwest marketing area would be expected to be associated with the Southwest market, including 21 fully regulated distributing plants, 2 partially regulated, 2 exempt and 6 producer-handlers. None of these plants' regulatory status is expected to change as a result of the consolidation process.

Of the 21 fully regulated plants, 17 are located in the top six MSA regions.

Since October 1997, it is known that 3 plants (2 fully regulated and 1 producer-handler) have gone out of business. The fully regulated plants were located in El Paso, Texas, and in Albuquerque, New Mexico. The producer-handler was located in Hobbs, New Mexico.

Of the 31 distributing plants that would be located in the consolidated Southwest marketing area, 24 are in Texas, and 7 are in New Mexico. Twenty of the Texas plants would be fully regulated. They are as follows: 6 in the Dallas area, 3 in the Houston area, 2 in the San Antonio area, 1 in the Austin area, and 2 in the El Paso area, and 6 located throughout the state. One of the Texas distributing plants was associated with Order 30 (Chicago Regional) in October 1997, and is expected to be partially regulated in the Southwest market. Two producer-handlers are located in Texas, one in the El Paso area and the other in the central part of the state.

Just over half of New Mexico's 7 distributing plants are located in the Albuquerque area. One fully regulated handler and 3 producer-handlers are located in this population center. Of the remaining 3 plants located in New Mexico, there are 2 plants that would be exempt on the basis of size (both located in central New Mexico) and 1 producer-handler (located southeast of Albuquerque).

Utilization

According to October 1997 pool statistics, the Class I utilization percentages for the Texas and New Mexico-West Texas markets were 56 and 44 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Southwest order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Texas, a 5-cent per cwt decrease (from $14.09 to $14.04), and New Mexico-West Texas, a 10-cent per cwt increase (from $13.51 to $13.61). The weighted average use value for the consolidated Southwest order market is estimated to be $13.97 per cwt. For October 1997, combined Class I utilization for Orders 126 and 138 was 53.4 percent based on 347.0 million pounds of producer milk used in Class I out of 649.9 million total producer milk pounds.

Other Plants

Located within the Southwest marketing area during May 1997 were 17 manufacturing plants: 11 in Texas (2 in the Dallas MSA and 1 in the El Paso MSA) and six in New Mexico. Six of the 17 plants were pool plants. All of these pool plants were manufacturing plants—one manufactured primarily Class II products, two manufactured primarily powder, two manufactured primarily cheese and one manufactured primarily other products. Of the 11 nonpool plants in the Southwest marketing area, all were manufacturing plants—one manufactured primarily powder, four manufactured primarily cheese, one manufactured primarily other products and five manufactured primarily Class II products.

Cooperative Associations

In December 1997, three cooperative associations marketed about 95 percent of the milk pooled under both of the orders consolidated in the Southwest area: Dairy Farmers of America (DFA); and Select Milk Producers, Inc. (Select); and Elite Milk Producers, Inc. (Elite).

Criteria for Consolidation

Nearly all of the route disposition by Order 126 and 138 handlers is distributed within the consolidated marketing area. In addition, nearly all of the milk that would be pooled under the consolidated order, based on October 1997 data, originates within the marketing area. Two cooperatives market the vast majority of milk within the consolidated area.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the Texas and New Mexico-West Texas order areas that were considered included the consolidation of east Texas with the Southeast area. This alternative consolidation was examined at length and found to have little overlap of either fluid milk product disposition or producer milk movements.

Only one comment pertained specifically to the consolidated Southwest marketing area. This was a comment from DFA that discussed general support for the marketing areas proposed by USDA, with no objection to the Southwest marketing area, as proposed.

Arizona-Las Vegas

The consolidated Arizona-Las Vegas marketing area is comprised of the current Central Arizona (Order 131) marketing area, one county in Nevada which currently is in the Great Basin (Order 139) marketing area, and currently unregulated counties in Arizona. There are 16 counties in this consolidated marketing area. This area remains unchanged from the proposed rule.

Geography

The Arizona-Las Vegas market is described geographically as follows: All counties (15) in Arizona (6 whole and 1 partial currently are part of Order 131, and 8 whole and 1 partial currently are unregulated) and Clark County, Nevada, which currently is part of the Great Basin marketing area. The market extends about 400 miles north to south from Arizona's border with Utah (and Nevada's southernmost county) to the U.S.-Mexico border. The market ranges from 300 to 375 miles east to west from the Arizona-New Mexico border to the Arizona/southern Nevada-California border.

The Arizona-Las Vegas marketing area is contiguous to two other consolidated marketing areas, the Great Basin portion of the Western area to the north and the New Mexico-West Texas portion of the Southwest area to the east. California, which is not part of the Federal order system, lies to the west and Mexico is south of this marketing area.

Arizona can be divided into three geographic regions—the Sonoran Desert, in the southwest; the Colorado Plateau, in the north; and the Mexican Highland, mainly in the central and southeastern parts of the state. With each of these regions, three distinct climatic zones exist: The Sonoran Desert is hot in the summer but can experience frost in the winter; the Colorado Plateau is hot and dry in the summer and cold and windy in the winter; and the Mexican Highland receives significant precipitation in both summer and winter. This region is cooler in both summer and winter than the Sonoran Desert region.

These topographical and climatic conditions apparently are conducive to milk production. Dairy products represent one of the principal agricultural commodities (2nd and 3rd) in the States of Arizona and Nevada, respectively, representing 16.6 and 21.7 percent of total agricultural receipts of the two States in 1996.

Population

Arizona is one the fastest-growing states in the United States. According to July 1, 1997, population estimates, the total population in the consolidated marketing area is 5.7 million. Using Metropolitan Statistical Areas (MSAs), the largest population center is the Phoenix-Mesa (Phoenix) area, located in

central Arizona approximately 125 miles north of the U.S.-Mexico border in the Sonoran Desert region. About 250 miles to the northwest of Phoenix is the Las Vegas, Nevada, area, the second-largest population center in this marketing area. The Las Vegas MSA is comprised of three counties: Clark and Nye counties in Nevada and Mohave County in Arizona. Almost half of this market's population is in the Phoenix area, and over 70 percent is accounted for when Las Vegas is added.

Fluid Per Capita Consumption

Based on the population figure of 5.7 million and an estimated per capita fluid milk consumption rate of 20 pounds of fluid milk per month, total fluid milk consumption in the Arizona-Las Vegas marketing area is estimated at 114 million pounds per month. In October 1997, plants that would have been fully regulated distributing plants in the Arizona-Las Vegas order had route disposition within the market of approximately 95 million pounds, representing 94 percent of their route disposition. Another 6.5 million pounds of milk was distributed in the consolidated marketing area by 2 handlers expected to be fully regulated under the consolidated Western Federal order and by 10 California plants that are partially regulated under the Central Arizona and Great Basin orders.

Milk Production

In October 1997, almost 196 million pounds of milk was pooled in the Central Arizona market, supplied by over 100 producers located in fewer than 10 counties in Arizona and California. Over 95 percent of the Central Arizona milk was produced within the marketing area. Further, over 90 percent of the producer milk produced within the Order 131 area was produced in Maricopa County, Arizona, where Phoenix, this market's largest city, also is located. With 177 million pounds of producer milk for October 1997, Maricopa County produces almost twice the amount of milk required to meet the fluid milk needs of the entire marketing area. Arizona producers did not supply milk to any other Federal order; however, it is known that producer milk moves from both Arizona and Clark County, Nevada, to southern California. These figures do not reflect the producer milk associated with Anderson Dairy, the Las Vegas handler who has been pooled on Order 139. There is only one producer located in Clark County, Nevada. Anderson's milk supply comes from a cooperative association in southern California.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 8 distributing plants would be expected to be associated with the consolidated Arizona-Las Vegas marketing area, including 5 fully regulated distributing plants (all currently pool plants), 1 exempt plant and 2 producer-handlers. There are 4 distributing plants in the Phoenix area (all pool plants). Located in the Las Vegas MSA are one pool plant and a producer-handler. Another producer-handler is located in the Yuma area and the exempt plant is located in a currently-unregulated Arizona county, and has total route disposition of less than 150,000 pounds. All of the plants that are expected to be fully regulated under this consolidated order are located in areas that contain over 70 percent of the market's population.

Utilization

According to October 1997 pool statistics, the Class I utilization for the Central Arizona market was 46 percent. Due to restricted information, this calculation excludes receipts for the Las Vegas handler who currently is regulated under Order 139, but would be regulated under this order. Because the degree of consolidation for this market is very minor, little change in the Class I utilization percentage, and thus little change in producer returns, is expected in the Arizona-Las Vegas area as a result of the consolidation. For October 1997, Class I utilization for the Central Arizona market was 46.3 percent based on the use of 90.8 pounds of producer milk in Class I out of 195.9 total pounds of producer milk. The weighted average use value for the Arizona-Las Vegas market is estimated to be $13.84 per hundredweight.

Other Plants

For May 1997, 3 supply or manufacturing plants were located within the Arizona-Las Vegas marketing area: 2 in Arizona (both in the Phoenix area) and 1 in Nevada (in the Las Vegas area). One Arizona plant was a pool plant operated by the cooperative, manufacturing primarily cheese, while the other plants were nonpool plants manufacturing primarily Class II products.

Cooperative Associations

For December 1997, the only cooperative pooling milk under the Central Arizona order was United Dairymen of Arizona, which represented over 90 percent of the milk pooled under the Central Arizona order. Security Milk Producers Association, a cooperative based in California, supplies milk to the Las Vegas handler.

Criteria for Consolidation

Market data indicate that there are sales into the Las Vegas area by Central Arizona pool plants, and sales by both Phoenix and Las Vegas handlers into the unregulated areas along the southern part of the Nevada-Arizona border. Rapid population growth in the area between the two areas has greatly increased competition between the handlers in Phoenix and Las Vegas. In addition, both areas exchange significant volumes of bulk and packaged milk with Southern California. At the same time, the strength of the earlier relationship between the Las Vegas area and Utah clearly has declined since the merger of the Lake Mead and Great Basin order areas in 1988, which was based on data compiled up to 1986.

The Grand Canyon serves as a natural barrier in northwestern Arizona between this area and Great Basin. Although the actual consolidated order area extends to the Utah border, the portion of Arizona between the Grand Canyon and Utah is very sparsely populated, and is included in the consolidated marketing area primarily for the purpose of simplifying the marketing area description and easing handlers' burden of reporting out-of-area sales. The Colorado River forms much of the western boundary with California and Nevada. A north-south strip along the eastern edge of Arizona constituting approximately 30 percent of the State's territory is very sparsely populated, containing just over 5 percent of the population of the consolidated marketing area. This lightly populated desert area can be seen as another form of natural barrier to the movement of bulk and packaged milk.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the Central Arizona marketing area and the southern Nevada portion of the Great Basin order area included retaining the Las Vegas area with the rest of the current Great Basin order area in the consolidated Western marketing area.

Twelve comments that pertained specifically to the proposed Arizona-Las Vegas area were filed by 10 commenters in response to the proposed rule. Anderson Dairy in Las Vegas advocated that Clark County, Nevada, in which Las

Vegas is located, be left out of any consolidated marketing area to better enable Anderson to compete with milk distributed from California and from the Salt Lake City area. Two comments from the Nevada Dairy Commission, suggesting that prices could be set within the State, and from a U.S. Senator from Nevada, requested that Clark County be excluded from any Federal order marketing area. Security Milk Producers Association, a cooperative that supplies milk to Anderson, first filed a comment supporting the proposed Arizona-Las Vegas area, and then filed a later comment urging that if Clark County cannot be deregulated and California does not become a Federal order, Clark County should be reunited with the rest of the consolidated Western order area. A commenter in the southern Nevada dairy industry supported the cooperative's view.

A comment from DFA suggested that the Great Basin marketing area be consolidated with the proposed Arizona-Las Vegas area rather than the proposed Western area, arguing that the price/utilization relationships of the Great Basin area are more similar to the Arizona-Las Vegas area than to the rest of the Western area. Darigold, Inc., urged that Las Vegas be reunited with Utah due to its proximity to the major production areas in Utah. Darigold suggested that if there is a linkage between the Phoenix and Las Vegas markets, those areas both should be included in the Western area.

A comment filed by the American Farm Bureau Federation recommended that the consolidation of the Central Arizona and Clark County areas be reconsidered in favor of a return to the consolidation of the Central Arizona area with the Southwest area, suggested in the Initial Preliminary Report on Order Consolidation.

A comment filed by the Dairy Institute of California supported the consolidation of the Las Vegas area with Arizona because such a combination would eliminate competitive distortions between these areas and California caused by the Las Vegas raw milk price levels. The Utah Farm Bureau stated that it does not oppose removing the Clark County, Nevada, area from the Great Basin order area and combining it with Arizona.

An increase in sales by Central Arizona pool plants into the Las Vegas area, and increased sales by both Phoenix and Las Vegas handlers into the unregulated area of rapidly-increasing population along the southern part of the Nevada-Arizona border, are factors that have greatly increased overlapping route distribution in these two areas. Mohave County, Arizona (currently-unregulated), and Clark County, Nevada, are two of the fastest-growing areas in the United States in terms of population. These two counties adjoin each other in southern Nevada and northwestern Arizona, and both are increasing in population significantly faster than the growth rates for their states. From 1990 to 1997, a period during which the population of the United States increased by 7.6 percent, the population of Arizona increased by 24.3 percent, while Mohave County's population increased by 37.8 percent. Over the same period, Clark County, Nevada, experienced a population increase of 49.2 percent, while the Nevada population increased by 39.5 percent. The rapidly-growing area between Phoenix and Las Vegas represents a growing market which can be expected to be served by both of the major population centers.

Ninety-five percent of the route dispositions of handlers who would be regulated under this order were distributed within the consolidated marketing area in October 1997, and approximately the same percentage of route disposition within the marketing area was by handlers who would be regulated under this consolidated order. Similarly, over 95 percent of the milk pooled under the current Central Arizona order is produced within the marketing area, and there is no indication of movements of producer milk between Utah and Nevada, as was the case when the Great Basin and Lake Mead orders were merged.

In addition, both areas exchange significant volumes of bulk and packaged milk with Southern California, a relationship that does not pertain to any of the other areas in the region. The Las Vegas area's earlier relationship with southern Utah was based primarily on Utah as an important milk supply area for Las Vegas at the time of the merger of the Lake Mead and Great Basin order areas in 1988. That relationship clearly has ceased to exist. Therefore, the assertion by commenters that the Las Vegas, Nevada, area should continue to be included in the same marketing area with Utah or be unregulated does not reflect current marketing conditions.

Western

The consolidated Western marketing area is comprised of the current Southwestern Idaho-Eastern Oregon (Order 135) and Great Basin (Order 139) marketing areas, less one Nevada county (Clark) in Order 139 that is added to the Arizona-Las Vegas marketing area. There are 67 counties in this consolidated area. The Western Colorado (Order 134) marketing area, proposed to be part of the Western consolidated area, was changed to become part of the Central consolidated area.

Geography

The Western market is described geographically as follows: 28 counties in Idaho (18 currently in Order 135 and 10 in Order 139), 3 in eastern Nevada (all currently in Order 139), 5 in eastern Oregon (all currently in Order 135), all counties (29) in Utah (currently in Order 139) and 2 in the southwest corner of Wyoming (currently in Order 139). Measuring the extreme dimensions, this market extends about 625 miles north to south from Oregon and Idaho to Utah's boundary with Arizona. This market's east-to-west dimension is approximately 550 miles from the westernmost edge in central/eastern Oregon to the easternmost edge of the Utah/Colorado border.

The consolidated Western marketing area is contiguous to four of the consolidated marketing areas, the Pacific Northwest to the west and north of the Oregon portion of this market, Arizona-Las Vegas to the south, the Central market on the east, and the Southwest to the extreme southeast corner. Non-Federally regulated territory borders the Western market on the west-southwest (Nevada) and the north-northeast (Idaho and Wyoming).

In terms of physical geography, the Western marketing area has several regions: The Columbia Plateau in southern Idaho and northeastern Nevada, characterized by fertile soils; the Great Basin in southeast Idaho, nearly all of Nevada and the western third of Utah, described by ranges and parallel valleys; and the Colorado Plateau in the eastern half of Utah, characterized by gorges. In general, the Western market is quite dry, with temperatures tending to be extreme and affected by elevation.

Population

According to July 1, 1997, population estimates, the total population in the consolidated marketing area is 3.2 million. Using Metropolitan Statistical Areas (MSAs), the largest population center is the Salt Lake City-Ogden, Utah area (Salt Lake City). Salt Lake City is located in north central Utah. The Boise City, Idaho, area (Boise), the second largest population center in this marketing area, is located about 300 miles to the northwest of Salt Lake City. Provo-Orem, Utah, (Provo) the third largest population center, lies 40 miles

south of Salt Lake City. Forty percent of the market's population is in the Salt Lake City area, and over 60 percent is accounted for when Boise and Provo are added.

Fluid Per Capita Consumption

Based on the population figure of 3.2 million and an estimated per capita fluid milk consumption rate of 23 pounds of fluid milk per month, total fluid milk consumption in the Western marketing area is estimated at 73.6 million pounds per month. Plants that would have been fully regulated distributing plants in the Western order had route disposition within the market of 74 million pounds in October 1997; approximately 80 percent of this total is from Order 139 pool plants. The 7 producer handlers operating during this month had a combined route disposition of 1.6 million pounds. Additionally, 1.1 million pounds of route disposition came from other order plants, with about .5 million from partially regulated handlers and exempt plants.

Milk Production

In October 1997, over 457 million pounds of milk was associated with the Great Basin and Southwestern Idaho-Eastern Oregon markets, but only 304 million pounds of this milk was pooled because of class price relationships. The 457 million pounds of milk were produced by 952 dairy farmers located in 51 counties in California, Idaho, Nevada, Oregon, Utah and Wyoming. Over 95 percent of the milk associated with the market was produced within the marketing area. Four counties produced more than 50 percent of the milk available to be pooled. The three top producing counties in Idaho, Jerome, Gooding and Twin Falls counties, are all located in southwestern Idaho, about 130 miles southeast of Boise and 230 miles northwest of Salt Lake City. Jerome and Gooding counties each provided approximately twice as much milk as Twin Falls County, the third-largest county in terms of milk production in the Western market. The fourth-largest production county was Cache County in northeastern Utah, located about 80 miles north of Salt Lake City.

The three Idaho counties, part of the marketing area of the current Southwestern Idaho-Eastern Oregon order, are the top three milk-producing counties for Order 135 and among the top seven milk-producing counties for Order 139 in October 1997. Five counties in the current Southwestern Idaho-Eastern Oregon marketing area supplied one-quarter of the milk associated with the Great Basin order in October 1997.

Distributing Plants

Using the distributing plant list included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 25 distributing plants would be expected to be associated with the Western marketing area, including 11 fully regulated distributing plants (all currently pool plants), 2 partially regulated (currently partially regulated), 1 exempt plant based on size (currently a pool plant), 7 producer-handlers, and 4 exempt plants based on institutional status (all were exempt as defined under current federal orders). Since October 1997, it is known that 2 distributing plants (1 fully regulated and 1 exempt plant) in Utah and 1 producer-handler in Arizona have gone out of business.

There would be 9 distributing plants in the Salt Lake City area (5 pool plants, 2 producer-handlers and 2 exempt plants). The Boise area would have 2 pool distributing plants, the Provo area would have 1 exempt plant and the Pocatello area would have 1 pool plant. The remaining 12 distributing plants are located in Idaho (4 plants: 2 pool, 1 exempt, and 1 producer-handler), Nevada (1 partially regulated plant), and Utah (7 plants: 1 pool, 1 partial, 1 exempt, 4 producer-handlers).

Fully regulated distributing plants are located in MSAs containing about half of the consolidated market's population, including the Pocatello, Idaho, MSA, with 2.2 percent of this market's population.

Utilization

According to October 1997 pool statistics, the Class I utilization percentages for the Southwestern Idaho-Eastern Oregon and Great Basin markets were 16 and 41 percent, respectively. Based on calculated weighted average use values for (1) the current order with current use of milk, and (2) the current order with projected use of milk in the consolidated Western order, the potential impact of this market consolidation on producers who supply the current market areas is estimated to be an 11-cent per cwt increase (from $12.92 to $13.03) for Southwestern Idaho-Eastern Oregon, and a 9-cent per cwt decrease (from $13.25 to $13.16) for Great Basin. The weighted average use value for the consolidated Western order market is estimated to be $13.14 per cwt. For October 1997, combined Class I utilization for Orders 135 and 139 was 32.5 percent based on 98.8 million pounds of producer milk used in Class I out of 304.1 million total producer milk pounds.

A substantial amount of milk was omitted from the Southwestern Idaho-Eastern Oregon pool for October because of unusual price relationships. The annual Class I utilization percentage may be considered more representative for this market. For the year 1997, the annual Class I utilization for Southwestern Idaho-Eastern Oregon was 8.3 percent. It is estimated that the Class I use percentage for the consolidated market would be about 23 percent.

Other Plants

Eighteen supply or manufacturing plants were located within the consolidated Western marketing area during May 1997: 8 in Idaho (3 in the Boise area), 9 in Utah (2 in the Salt Lake City area) and 1 in Wyoming. Two of the 18 plants were pool plants; both manufacture primarily cheese. Of the 16 nonpool plants, 12 manufacture primarily cheese and 5 manufacture primarily soft or Class II products (including ice cream). Of the 8 Idaho plants, all but one manufacture cheese, while of the 9 Utah plants, 6 manufacture cheese and 3 manufacture soft products.

Cooperative Associations

For December 1997, four cooperatives representing 77 percent of the milk pooled under the two orders had membership in the consolidated Western marketing area. Western Dairymen Cooperative, Inc., a cooperative association that became part of Dairy Farmers of America, Inc., had membership in both the Southwestern Idaho-Eastern Oregon and Great Basin marketing areas. Magic Valley Quality Milk Producers, Inc., also had membership in Orders 135 and 139; Darigold Farms had membership in Order 135, and Security Milk Producers' Association had membership in Order 139.

Criteria for Consolidation

The consolidated Western market is composed of the current marketing areas of the Southwestern Idaho-Eastern Oregon and Great Basin markets, minus the Clark County, Nevada, portion of the Great Basin area. Sales overlap exists between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in Idaho. The two orders also share similar multiple component pricing plans. The Western Colorado order, proposed for inclusion in the Western area, was shown on the basis of October 1997 data to have developed a

closer relationship with the Eastern Colorado area than with the Great Basin order, and has been included in the consolidated Central area instead of the Western area.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the consolidation of the Southwestern Idaho-Eastern Oregon, Great Basin (minus Clark County, Nevada) and Western Colorado marketing areas that were considered included leaving the Southwestern Idaho-Eastern Oregon area as a separate order and consolidating the Great Basin market with the Central Arizona, Western Colorado, and Eastern Colorado marketing areas, leaving both the Southwestern Idaho-Eastern Oregon and Great Basin areas as separate order areas, and combining the Western Colorado area with the Eastern Colorado area and other areas to the east. These alternative consolidations were examined at length and found to be less appropriate than the marketing areas delineated in the proposed rule in terms of overlap of either fluid milk product disposition or producer milk movements.

Fifteen comments that pertained specifically to the proposed Western marketing area were filed by 12 commenters in response to the proposed rule. Several of these comments objected to the separation of the Las Vegas area from the Great Basin portion of the Western area. These comments are addressed in the discussion of comments and alternatives considered for the consolidated Arizona-Las Vegas area.

Comments filed by Dairy Farmers of America, Southern Foods Group, and a western Colorado dairy farmer advocated consolidating the Western Colorado order area with the consolidated Central area instead of the Western area. DFA's comment stated that the Western Colorado milkshed is more similar to the Central area than to the Western area. The comments filed by Southern Foods Group and the dairy farmer expressed concern about an expected reduction in the blend price paid to producers supplying the Western Colorado area.

October 1997 data show an increased relationship between Western Colorado and Eastern Colorado, and reduced milk movements between Western Colorado and Great Basin. On the basis of the change in the relationships between Western Colorado and its two nearest neighbor order areas, the Western Colorado area should become part of the consolidated Central area instead of the Western area.

Five Farm Bureau organizations (Michigan, Utah, Iowa, Ohio and American), a Pennsylvania producer and Dairy Farmers of America filed eight comments opposing the consolidation of the Southwestern Idaho-Eastern Oregon order area with the Great Basin marketing area. One DFA comment suggested combining Utah with the Arizona-Las Vegas area instead of with Idaho. A primary basis for opposition to the consolidation is the disparity in the two regions' utilization of Class I fluid milk: The Southwestern Idaho-Eastern Oregon order has a very low percentage of Class I use, which varies from less than 10 percent to over 20 percent, while the Great Basin order's Class I use percentage is higher at about 35 percent. Commenters fear that the consolidation of these orders would result in lower returns to producers who currently are pooled under the Great Basin order. Most of the comments suggest that the Southwestern Idaho-Eastern Oregon marketing area should remain under a separate order.

A major source of milk production for both the Southwestern Idaho-Eastern Oregon and Great Basin orders is a 5-county area located within the Federal order 135 marketing area, supplying one-quarter of the milk pooled on the Great Basin order in October 1997. The Southwestern Idaho-Eastern Oregon area should be consolidated with some other order area because of the small number of handlers pooled under the order, and this close relationship with Great Basin makes that consolidation the only viable possibility.

Pacific Northwest

The Pacific Northwest marketing area is comprised of the current Pacific Northwest (Order 124) marketing area and one currently-unregulated county in southwest Oregon. There are 75 counties in this marketing area. This area remains unchanged from the proposed rule.

Geography

The Pacific Northwest market is described geographically as follows: All counties (39) in Washington, 30 counties in Oregon (29 currently are part of Order 124 and one, Curry County, is unregulated) and six counties in northwestern Idaho. The market extends about 490 miles north-to-south from Washington's northern border with the Canadian province of British Columbia to Oregon's southern border with California and Nevada. East-to-west, the market ranges from about 450 miles in the northern half of the market (covering territory from Washington's western boundary with the Pacific Ocean to the eastern border of Idaho with Montana) to about 250 miles in the southern half of the market (covering approximately two-thirds of Oregon from the state's western border with the Pacific Ocean to central Oregon).

The Pacific Northwest marketing area is contiguous with the consolidated Western Federal order marketing area in eastern Oregon. The remainder of the marketing area is surrounded by currently non-Federally regulated areas (California and northwestern Nevada to the south and Montana, Idaho, and one northeastern Oregon county to the east), political boundaries (Canada to the north), and the Pacific Ocean to the west.

Along the Oregon and Washington coasts lies the Coast Range. The Cascade Range is located further inland in both states. Both ranges are north-south in direction, and the Cascade Range effectively divides both states into two distinct climates: a year-round mild, humid climate with abundant precipitation predominates in the western part of the states, and a dry climate with little precipitation but greater temperature extremes prevails east of the Cascade Range. The mild climate of the western portion results in longer growing seasons. The Columbia River flows south through eastern Washington, turns west, and becomes the western two-thirds of the border between Oregon and Washington. The portion of Idaho included in the Pacific Northwest marketing area is within the Rocky Mountains. This area has a generally continental climate with the higher elevations having long and severe winters.

Much of the area is conducive to the production of milk and many other agricultural commodities. Although dairy products ranked 2nd among receipts of agricultural commodities in the State of Washington in 1996, and 4th in Oregon, they accounted for only 13.8 percent and 7.9 percent, respectively, of such receipts. Apples (in Washington) and greenhouse/nursery, wheat, and cattle and calves (in Oregon) ranked ahead of dairy, accounting for 19.8 percent and 33.8 percent, respectively, of agricultural commodity receipts.

Population

According to July 1, 1997, population estimates, the total population in the marketing area is 9 million. Seventy-seven percent of the marketing area population is located in Metropolitan Statistical Areas (MSAs). The two

largest MSAs are located on the western side of the Cascade Range. The Seattle-Tacoma-Bremerton (Seattle) area, with a population of 3.4 million (37.6% of the marketing area population), is in northwestern Washington. Over seventy percent of the population of the State of Washington is located west of the Cascade Mountains, in the western third of the State. Another 14.5% of the State's population is contained in 3 MSA's east of the Cascades.

The Portland-Salem (Portland) area in northwestern Oregon is located on the Oregon-Washington border, with Portland just south of the Columbia River. The population of this MSA is 2.1 million, or 23.6% of the marketing area population. Ninety percent of the population of Oregon is concentrated in the western one-third of the State, or in the western half of the Oregon portion of the marketing area.

Fluid Per Capita Consumption

Based on the population figure of 9 million and an estimated per capita fluid milk consumption rate of 22 pounds of fluid milk per month, total fluid milk consumption in the Pacific Northwest marketing area is estimated at 198 million pounds per month. For October 1997, plants that would be fully regulated distributing plants under the Pacific Northwest order had route disposition within the market of 170 million pounds. In addition, the 18 producer-handlers operating during this month had a combined route disposition of 18 million pounds. Additionally, slightly over 1 million pounds of route disposition (less than one percent of total route disposition in the marketing area) came from handlers outside the market. Because the handlers associated with this market are able to fulfill the market's Class I or fluid needs, and because of the somewhat geographic isolation of the market, maintaining the current Pacific Northwest order as a separate market is appropriate.

Milk Production

In October 1997, the 540 million pounds of milk pooled in the Pacific Northwest market were produced by 1,211 producers located in 57 counties in California, Idaho, Oregon, and Washington. Five counties produced 57 percent of the milk pooled. Four of these counties are in Washington State. They are Whatcom, Skagit, and Snohomish counties, which are less than 100 miles north of Seattle; and Yakima County, which is located in central Washington about 100 miles southeast of Seattle on the eastern side of the Cascade Range. The fifth county is in Oregon. It is Tillamook County, which borders the Pacific Ocean, about 60 miles west of the Portland area on the western side of the Coast Range.

Less than two percent of the milk pooled in the Pacific Northwest was produced outside of the marketing area, in Idaho and California. The largest portion is from producers in two northern California counties who pooled nearly 6 million pounds of milk or 89.8 percent of the pooled milk produced outside the Pacific Northwest marketing area.

Distributing Plants

Using distributing plant lists included in the proposed rule, with the pooling standards adjusted to 25 percent of route disposition as in-area sales, updated for known plant closures through December 1998, 35 distributing plants would be expected to be associated with the Pacific Northwest market, including 19 fully regulated distributing plants (all currently fully regulated), 2 partially regulated plants, 4 exempt plants (below 150,000 pounds in total route disposition), and 10 producer-handlers. It is known that 3 distributing plants (all producer-handlers) have gone out of business since October 1997.

There are 11 distributing plants within the Portland area, including 7 pool plants, 2 exempt plants and 2 producer-handlers. The Seattle/Tacoma MSAs have 4 pool plants, 1 partially regulated plant, and 4 producer-handlers. In addition to these two main population centers, the Spokane, Washington, MSA, located in the eastern area of the state near the Idaho border with a population of 405,000, has 2 pool plants.

Two smaller MSA's in western Oregon contain 2 pool plants, 1 producer-handler, and 1 plant exempt on the basis of size. Of the 5 distributing plants that would be operating in Oregon outside of MSAs, 3 would be fully regulated, 1 partially regulated, and 1 exempt of the basis of size. All but one, in central Oregon, are located in western Oregon.

One producer-handler is located in a northwest Washington MSA, and 1 pool plant, 2 producer-handlers and 1 partially regulated plant are located in the southeast quadrant of the State of Washington outside any MSA.

Since October 1997, three producer-handlers are known to have gone out of business, two in the State of Washington, and one in Oregon.

Distributing plants fully regulated under the Pacific Northwest order are located in MSAs where 71 percent of the market's population is concentrated.

Utilization

According to October 1997 pool statistics, the Class I utilization percentage for the Pacific Northwest market was 36 percent. Because this market is to remain separate, expected utilization changes due to the reform process result only from potential changes in plants' regulatory status; thus very little change in producer returns under the Pacific Northwest order is expected as a result of consolidation. For October 1997, Class I utilization for the Pacific Northwest market was 35.6 percent based on 192 million pounds of producer milk used in Class I out of 540 million total producer milk pounds. The weighted average use value for the Pacific Northwest market is estimated to be $13.33 per hundredweight.

Other Plants

Located within the Pacific Northwest marketing area in May 1997 were 27 supply or manufacturing plants; 12 in Oregon (5 in the Portland area), 15 in Washington (7 in the Seattle area) and none in Idaho. Two of the 27 plants (both in Oregon) were Order 124 pool supply plants, one of which manufactured primarily cheese, and the other nonfat dry milk. Of the 10 nonpool manufacturing plants located in Oregon, 8 manufactured primarily Class II products (including ice cream), 1 manufactured butter, and the other made cheese.

The 15 manufacturing/supply plants located in the State of Washington were all nonpool plants. Three manufactured primarily Class II products, 3 manufactured primarily butter, 2 manufactured primarily powder, and 7 manufactured primarily cheese.

Cooperative Associations

Five cooperative associations had members in the Pacific Northwest market in December 1997. Darigold Farms is the largest, and the only cooperative that had membership affiliated with another order (Order 135) in December 1997. Other cooperatives in this market are Farmers Cooperative Creamery, Tillamook County Creamery Association, Northwest Independent Milk Producers Association, and Portland Independent Milk Producers Association. These five cooperatives pooled 85 percent of the total producer milk pooled under the Pacific Northwest order in December 1997.

Criteria for Consolidation

The consolidated Pacific Northwest market adds one currently unregulated Oregon county to the Pacific Northwest milk order. The degree of association of

this market with other Federal order marketing areas is insufficient under any criteria to warrant consolidation with any other order areas.

Discussion of Comments and Alternatives

Prior to issuance of the proposed rule, alternatives to the leaving the Pacific Northwest area as a separate order area that were considered included the consolidation of the current Pacific Northwest, Southwestern Idaho-Eastern Oregon and Great Basin order areas. Because there is virtually no relationship with regard to either overlapping route dispositions or overlapping milk procurement between the Pacific Northwest and Southwestern Idaho-Eastern Oregon milk marketing areas, and none at all with Great Basin, these alternatives were not pursued.

Only two comments pertained specifically to the ''consolidated'' Pacific Northwest marketing area. Darigold Farms, Inc., commented that the Pacific Northwest marketing area should remain unchanged except for the addition of the one southwestern Oregon county proposed to be added. Darigold stated that the addition of this county would not cause the regulation of any plant. A comment filed by an individual from Utah stated that Idaho should be included in the Pacific Northwest area or be a separate order. As noted before, there is almost no relationship between the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas, and no basis for such a consolidation.

BILLING CODE 3410–02–P

LIST OF PLANTS AND REGULATORY STATUS

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
Northeast					
ARMSTRONG, DAVID F. (SUNSET DAIRY)	WHITESBORO	NY	NY–NJ	1	1
ARRUDA, GEORGIANNA (ESTATE OF)	TIVERTON	RI	New England	4	4
BANGMA, LEONARD & DONALD	UXBRIDGE	MA	New England	4	4
BECHTEL DAIRIES, INC	ROYERSFORD	PA	Mid Atlantic	1	OOB 4/98
BOICE BROS. DAIRY (RICHARD P. BOICE)	KINGSTON	NY	NY–NJ	1	1
BRIGGS, ROBERT A	WEST MEDWAY	MA	New England	4	4
BROOKSIDE DAIRY	FITCHBURG	MA	New England	4	4
BYRNE DAIRY, INC	SYRACUSE	NY	NY–NJ	1	1
CAMPHILL VILLAGE	KIMBERTON	PA	Mid Atlantic	4	4
CHRISTIANSEN DAIRY CO., INC	NO. PROVIDENCE	RI	New England	1	1
CHROME DAIRY FARMS	OXFORD	PA	Mid Atlantic	1	1
CIENIEWICZ, JOSEPH	BERLIN	CT	New England	4	4
CLINTON MILK CO	NEWARK	NJ	NY–NJ	1	OOB 10/98
CLOVER FARMS DAIRY COMPANY	READING	PA	NY–NJ	1	1
CLOVERLAND/GREEN SPRING DAIRY	BALTIMORE	MD	Mid Atlantic	1	1
CLOVERLAND/GREEN SPRING DAIRY	BALTIMORE	MD	Mid Atlantic	1	OOB 2/98
COOPER'S HILLTOP DAIRY FARM	ROCHDALE	MA	New England	4	4
CORNELL UNIVERSITY	ITHACA	NY		6A	6B
CRESCENT RIDGE DAIRY, INC	SHARON	MA	New England	4	4
CROWLEY FOODS, INC	ALBANY	NY	NY–NJ	1	1
CROWLEY FOODS, INC	BINGHAMTON	NY	NY–NJ	1	1
CROWLEY FOODS, INC	CONCORD	NH	New England	1	1
CUMBERLAND DAIRY, INC	BRIDGETON	NJ	Mid Atlantic	2	2
CUMBERLAND FARMS, INC	CANTON	MA	New England	1	OOB 8/98
DAIRY MAID DAIRY, INC	FREDERICK	MD	Mid Atlantic	1	1
DUNAJSKI DAIRY, INC	PEABODY	MA	New England	4	4
DUTCH VALLEY FOOD CO., INC	SUNBURY	PA	Mid Atlantic	1	1
DUTCH WAY FARM MARKET	MYERSTOWN	PA	Mid Atlantic	4	4
EDWARDS, CHARLES & KURT & KEITH (MODEL DAIRY FARM).	GLOVERSVILLE	NY	NY–NJ	4	4
ELMHURST DAIRY, INC	JAMAICA	NY	NY–NJ	1	1
EMBASSY DAIRY, INC	WALDORF	MD	Mid Atlantic	1	OOB 3/98
EMMONS WILLOW BROOK FARM, INC	PEMBERTON	NJ	Mid Atlantic	4	4
FAIRDALE FARMS, INC	BENNINGTON	VT	New England	2	1
FARMLAND DAIRIES, INC. &/OR FAIRDALE MILK COMPANY, INC.	WALLINGTON	NJ	NY–NJ	1	1
FISH FAMILY FARM, INC	BOLTON	CT	New England	4	4
FLINT, PETER	CHELSEA	VT	New England	1	1
FREDDY HILL FARM DAIRY	LANSDALE	PA	Mid Atlantic	4	4
FRIENDSHIP DAIRIES, INC	FRIENDSHIP	NY	NY–NJ	1	2
GARELICK FARMS, INC. WAS: CUMBERLAND FARMS, INC.	EAST GREENBUSH	NY	NY–NJ	1	1
GARELICK FARMS, INC. WAS: CUMBERLAND FARMS, INC.	FLORENCE	NJ	NY–NJ	1	1
GARELICK FARMS, INC	FRANKLIN	MA	New England	1	1
GIANT FOOD, INC	LANDOVER	MD	Mid Atlantic	1	1
GRANT'S DAIRY, INC	BANGOR	ME	New England	2	2
GRATERFORD STATE	GRATERFORD	PA	Mid Atlantic	6A	6B
GUERS DY., INC	POTTSVILLE	PA	Mid Atlantic	2	2
GUIDA-SEIBERT DAIRY CO	NEW BRITAIN	CT	New England	1	1
HALO FARM, INC	TRENTON	NJ	Mid Atlantic	1	1
HARRISBURG DAIRIES	HARRISBURG	PA	Mid Atlantic	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
HATCH, HOWARD	N. HAVERHILL	NH	New England	1	1
HATCHLAND DAIRY	N. HAVERHILL	NH	New England	4	4
HERITAGE'S DAIRY, INC	THOROFARE	NJ	Mid Atlantic	1	OOB 5/98
HERMANY FARMS, INC	BRONX	NY	NY–NJ	1	1
HIGHLAWN FARM	LEE	MA		5	3B
HILL FARM OF VERMONT	PLAINFIELD	VT		5	3B
HILLCREST DAIRY, INC. (MICHAEL J. JANAS)	MORAVIA	NY	NY–NJ	4	4
HINE, FREDRICK DBA: FIELD VIEW DAIRY FARM.	ORANGE	CT	New England	4	4
HOGAN, FRANCIS J. & ANDREW J. & SEAN P.—HOGAN'S DAIRY.	HUDSON FALLS	NY	NY–NJ	4	OOB 5/97
HOMESTEAD DAIRIES, INC	MASSENA	NY		5	OOB 6/98
HOOVER DAIRY	SANBORN	NY		5	5
HY POINT DAIRY FARMS, INC	WILMINGTON	DE	Mid Atlantic	1	1
H.E.A., INC	CRANSTON	RI	New England	1	1
H.P. HOOD, INC	AGAWAM	MA	New England	1	1
H.P. HOOD, INC. WAS: BOOTH BROTHERS DAIRY, INC.	BARRE	VT	New England	2	1
H.P. HOOD, INC	BURLINGTON	VT	New England	2	OOB 10/97
H.P. HOOD, INC	NEWINGTON	CT	New England	2	2
H.P. HOOD, INC	ONEIDA	NY	NY–NJ	2	1
H.P. HOOD, INC	PORTLAND	ME	New England	1	1
KEMPS FOODS, INC	LANCASTER	PA	Mid Atlantic	1	1
KOLB'S FARM STORE	SPRING CITY	PA	Mid Atlantic	4	4
KREIDER DAIRY FARMS, INC	MANHEIM	PA	NY–NJ	2	4
KRISCO FARMS, INC	CAMPBELL HALL	NY	NY–NJ	4	OOB 5/98
LAPP VALLEY FARM	NEW HOLLAND	PA	Mid Atlantic	4	4
LEESBURG STATE PRISON FARM	LEESBURG	NJ	Mid Atlantic	6A	6B
LEONARD, STEWART J	NORWALK	CT	New England	1	1
LEWES DAIRY, INC	LEWES	DE	Mid Atlantic	1	1
LEWIS COUNTY DAIRY CORP	LOWVILLE	NY	NY–NJ	1	1
LONGACRE'S MODERN DAIRY, INC	BARTO	PA	NY–NJ	1	1
MANINO, ROSE (DARI-DELL)	FRANKFORT	NY	NY–NJ	2	3B
MAPLE HILL FARMS, INC	BLOOMFIELD	CT	New England	1	OOB 9/97
MAPLEHOFE DAIRY, INC	QUARRYVILLE	PA	Mid Atlantic	4	4
MARCUS DAIRY, INC	DANBURY	CT	NY–NJ	1	1
MCNAMARA, PATRICK	WEST LEBANON	NH	New England	4	4
MEADOW BROOK FARMS, INC	POTTSTOWN	PA	Mid Atlantic	1	1
MERCERS DAIRY, INC	BOONVILLE	NY	NY–NJ	2	3B
BMERRYMEAD FARM	LANSDALE	PA	Mid Atlantic	4	4
MOHAWK DAIRY (Z & R CORP.)	AMSTERDAM	NY	NY–NJ	1	1
MONUMENT FARMS, INC	MIDDLEBURY	VT		5	1
MOUNT WACHUSETT DAIRY, INC	W. BOYLSTON	MA	New England	1	OOB 12/98
MOUNTAINSIDE FARMS, INC	ROXBURY	NY	NY–NJ	1	1
MUNROE, A B DAIRY, INC	EAST PROVIDENCE	RI	New England	1	1
NEW ENGLAND DAIRIES, INC	HARTFORD	CT	New England	1	1
NICASTRO FARMS, INC. DBA: RIVERSIDE FARMS.	FRANKFORT	NY	NY–NJ	4	4
NICHOLS, DAVID	CHESTERFIELD	MA	New England	4	4
NIP N TUCK FARMS	VINEYARD HAVEN	MA		5	4
OAK TREE FARM DAIRY, INC	EAST NORTHPORT	NY	NY–NJ	1	1
OAKHURST DAIRY	PORTLAND	ME	New England	2	2
OREGON DAIRY FARM MKT	LITITZ	PA	Mid Atlantic	4	4
PARMALAT WELSH FARMS, INC. WAS: WELSH FARMS, INC.	LONG VALLEY	NJ	NY–NJ	1	1
PARMALAT WEST DAIRIES, INC	SPRING CITY	PA	Mid Atlantic	2	OOB 5/97
PEACEFUL MEADOWS ICE CREAM, INC	WHITMAN	MA	New England	4	4
PEARSON, ROBERT L	WEST MILLBURY	MA	New England	4	4
PEDRO, JOSEPH	FALL RIVER	MA	New England	4	4
PENNVIEW FARMS	PERKASIE	PA	Mid Atlantic	4	4
PERRYDELL FARMS	YORK	PA	Mid Atlantic	4	4
PINE VIEW ACRES, INC	LANCASTER	PA	Mid Atlantic	4	4
PIONEER DAIRY, INC	SOUTHWICK	MA	New England	1	1
POTOMAC FARMS DAIRY, INC	CUMBERLAND	MD	Mid Atlantic	2	2
PULEO'S DAIRY	SALEM	MA	New England	1	3B
QUALITY MILK, INC	WARE	MA	New England	1	3B
QUEENSBORO FARM PRODUCTS,INC	CANASTOTA	NY	NY–NJ	1	2
READINGTON FARMS, INC	WHITEHOUSE	NJ	NY–NJ	1	1
READY FOODS, INC	PHILADELPHIA	PA	Mid Atlantic	2	3B
RICHARDSON FARMS, INC	MIDDLETON	MA	New England	4	4
RICHARDSONS G. H. DAIRY	DRACUT	MA	New England	3A	3B

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
RICHFOOD DAIRY	RICHMOND	VA	Mid Atlantic	1	1
RIDGE VIEW FARMS	ELIZABETHTOWN	PA	Mid Atlantic	4	4
RITCHEY'S DAIRY	MARTINSBURG	PA	Mid Atlantic	2	2
RONNYBROOK FARM DAIRY, INC	ANCRAMDALE	NY	NY–NJ	4	4
ROSENBERGER'S DAIRY, INC	HATFIELD	PA	Mid Atlantic	1	1
RUDOLPH STEINER EDUCATION & FARMING ASSOC., INC.	GHENT	NY	NY–NJ	4	4
RUTTER BROS. DAIRY, INC	YORK	PA	Mid Atlantic	1	1
SALEM VALLEY FARMS, INC	SALEM	CT	New England	4	4
SARATOGA DAIRY, INC. (STEWART'S PROCESSING CORP.).	SARATOGA SPRINGS	NY	NY–NJ	1	1
SCHNEIDER/VALLEY FARMS, INC	WILLIAMSPORT	PA	NY–NJ	2	2
SEWARD DAIRY, INC	RUTLAND	VT	New England	2	OOB 8/98
SHAW FARM DAIRY, INC	DRACUT	MA	New England	4	4
STEARNS, WILLARD J. & SONS, INC	STORRS	CT	New England	4	4
STOP & SHOP COMPANIES, INC	READVILLE	MA	New England	1	1
SULOMAN'S MILK	GILBERTSVILLE	PA	Mid Atlantic	4	4
SUNNYDALE FARMS, INC	BROOKLYN NY		NY–NJ	1	1
SYNAKOWSKI WALTER J (VALLEY SIDE FARM)	REMSEN	NY	NY–NJ	4	4
TANNER BROS. DAIRY	WARMINSTER	PA	Mid Atlantic	4	4
THOMAS, ORIN & SONS, INC	RUTLAND	VT	New England	2	1
TRINITY FARM	ENFIELD	CT	New England	4	4
TURKEY HILL DAIRY, INC	CONESTOGA	PA	Mid Atlantic	1	1
TURNER'S DAIRY, INC	SALEM	NH	New England	1	1
TUSCAN DAIRY FARMS, INC	FRASER	NY	NY–NJ	2	2
TUSCAN DAIRY FARMS, INC	UNION	NJ	NY–NJ	1	1
TUSCAN/LEHIGH DAIRIES, LP WAS: LEHIGH VALLEY DAIRIES, INC.	LANSDALE	PA	Mid Atlantic	1	1
TUSCAN/LEHIGH DAIRIES, LP WAS: LEHIGH VALLEY DAIRIES, INC.	SCHUYLKILL HAVEN	PA	NY–NJ	2	2
UPSTATE MILK COOPERATIVES, INC	BUFFALO	NY	NY–NJ	2	1
UPSTATE MILK COOPERATIVES, INC	JAMESTOWN	NY		5	5
UPSTATE MILK COOPERATIVES, INC	ROCHESTER	NY	NY–NJ	2	2
VALLEY OF VIRGINIA COOP. DBA SHENANDOAH'S PRIDE.	MT. CRAWFORD	VA	Mid Atlantic	2	2
VALLEY OF VIRGINIA COOP. DBA SHENANDOAH'S PRIDE.	SPRINGFIELD	VA	Mid Atlantic	1	1
VAN WIE, CHARLES F. (MEADOWBROOK FARMS DAIRY).	CLARKSVILLE	NY	NY–NJ	4	4
WALSH, WILLIAM	SIMSBURY	CT	New England	4	4
WAWA DAIRY FARMS	WAWA	PA	Mid Atlantic	1	1
WAY-HAR FARMS	BERNVILLE	PA	NY–NJ	3A	3B
WENDTS DAIRY DIV NIAGARA CO	NIAGARA FALLS	NY		5	5
WENGERTS DAIRY, INC	LEBANON	PA	Mid Atlantic	1	1
WEST LYNN CREAMERY, INC	LYNN	MA	New England	1	1
WHITTIER CREAMERY COMPANY, INC	SHREWSBURY	MA	New England	1	1
WINSOR, S. B. DAIRY, INC	JOHNSTON	RI	New England	1	3B
WRIGHT'S DAIRY FARM, INC	NORTH SMITHFIELD	RI	New England	4	4
Appalachian					
BROADACRE DAIRIES	POWELL	TN		5	1
CAROLINA DAIRIES	KINSTON	NC	Carolina	1	OOB 5/98
COBURG DAIRY, INC	N. CHARLESTON	SC	Carolina	1	1
DAIRY FRESH, LP	WINSTON-SALEM	NC	Carolina	1	1
DEAN MILK CO	LOUISVILLE	KY	Louis-Lex-Evans	1	1
FLAV-O-RICH, INC	BRISTOL	VA	Carolina	2	1
FLAV-O-RICH, INC	FLORENCE	SC	Carolina	1	1
FLAV-O-RICH, INC	LONDON	KY	Louis-Lex-Evans	1	1
FLAV-O-RICH, INC	WILKESBORO	NC	Carolina	1	1
GOLDEN GALLON, INC	CHATTANOOGA	TN	Southeast	1	1
HOOSIER DAIRY, INC. WAS: HOLLAND DAIRIES, INC.	HOLLAND	IN	Louis-Lex-Evans	1	1
HUNTER FARMS	CHARLOTTE	NC	Carolina	1	1
HUNTER FARMS	HIGHPOINT	NC	Carolina	1	1
IDEAL AMERICAN DAIRY	EVANSVILLE	IN	Louis-Lex-Evans	1	1
JACKSON DAIRY	DUNN	NC	Carolina	1	3B
JERSEY RIDGE DAIRY, INC	KNOXVILLE	TN		5	3B
LAND-O-SUN DAIRIES, INC	KINGSPORT	TN	Carolina	1	1
LAND-O-SUN DAIRIES, INC	PORTSMOUTH	VA	Carolina	2	2
LAND-O-SUN DAIRIES, INC	SPARTANBURG	SC	Carolina	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
MAOLA MILK & ICE CREAM CO	NEW BERN	NC	Carolina	1	1
MAPLEVIEW FARMS	HILLSBORO	NC	Carolina	1	3B
MARVA MAID DAIRY	NEWPORT NEWS	VA	Carolina	2	2
MAYFIELD DAIRY FARMS, INC	ATHENS	TN	Southeast	1	1
MILKCO, INC	ASHEVILLE	NC	Carolina	1	1
NORTH CAROLINA ST. UNIV.	RALEIGH	NC	Carolina	6A	6B
PEELER JERSEY FARMS, INC	GAFFNEY	SC	Carolina	1	OOB 10/98
REGIS MILK CO	CHARLESTON	SC	Carolina	1	1
SOUTHERN BELLE DAIRY, INC	SOMERSET	KY	Southeast	1	1
SUPERBRAND DY. PRODS., INC	GREENVILLE	SC	Carolina	1	1
SUPERBRAND DAIRY, INC	HIGHPOINT	NC	Carolina	1	1
U C MILK CO	MADISONVILLE	KY	Louis-Lex-Evans	1	1
WESTOVER DAIRIES	LYNCHBURG	VA	Carolina	1	1
WINCHESTER FARMS DAIRY	WINCHESTER	KY	Louis-Lex-Evans	1	1
Florida					
BORDEN, INC. (TRI-STATE DAIRY)	MIAMI	FL	Southeast Florida	1	OOB 4/97
FARM STORES, INC. (REW JB DAIRY PLANT ASSOCIATES dba FARM STORES).	MIAMI	FL	Southeast Florida	1	OOB 10/98
GOLDEN FLEECE DAIRY	LECANTO	FL	Tampa Bay	4	4
GUSTAFSON'S DAIRY, INC	GREEN COVE	FL	Upper Florida	1	1
M&B DAIRY PRODUCTS, INC	TAMPA	FL	Tampa Bay	1	3B
MCARTHUR DAIRY, INC	MIAMI	FL	Southeast Florida	1	1
PUBLIX SUPER MKTS., INC	DEERFIELD BEACH	FL	Southeast Florida	1	1
PUBLIX SUPER MKTS., INC	LAKELAND	FL	Tampa Bay	1	1
RYAN FOODS COMPANY, WAS: LONGLIFE DAIRY PRODUCTS, INC.	JACKSONVILLE	FL	Southeast	2	2
SUPERBRAND DAIRY PRODUCTS, INC	MIAMI	FL	Southeast Florida	1	1
SUPERBRAND DAIRY PRODUCTS, INC	PLANT CITY	FL	Tampa Bay	1	1
T.G. LEE FOODS, INC., WAS: LIFE STYLE/DIV TG LEE FOODS.	ORANGE CITY	FL	Upper Florida	1	1
T.G. LEE FOODS, INC	ORLANDO	FL	Tampa Bay	1	1
VELDA FARMS, INC	MIAMI	FL	Southeastern Florida	1	1
VELDA FARMS, INC	ST. PETERSBURG	FL	Tampa Bay	1	1
VELDA FARMS, INC	WINTER HAVEN	FL	Tampa Bay	1	1
WIGGINS DAIRY PRODUCTS, INC	PLANT CITY	FL	Tampa Bay	1	1
Southeast					
ALCORN STATE UNIVERSITY	LORMAN	MS	Southeast	6A	6B
ARKANSAS DEPT. OF CORREC	GRADY	AR	Southeast	6A	6B
AVENT'S DAIRY NC	OXFORD	MS	Southeast	1	1
BARBER PURE MILK CO	BIRMINGHAM	AL	Southeast	1	1
BARBER PURE MILK CO	MOBILE	AL	Southeast	1	1
BARBER PURE MILK CO	MONTGOMERY	AL	Southeast	1	1
BARBE'S DAIRY, INC	WESTWEGO	LA	Southeast	1	1
BORDEN, INC	BATON ROUGE	LA	Southeast	1	OOB 10/98
BORDEN MILK PRODUCTS, LLC	LAFAYETTE	LA	Southeast	1	1
BORDEN MILK PRODUCTS, LLC	MONROE	LA	Southeast	1	1
BROWNS VELVET DAIRY PRODUCTS (SOUTHERN FOODS GROUP, LP).	NEW ORLEANS	LA	Southeast	1	1
CENTENNIAL FARMS DAIRY, INC	ATLANTA	GA	Southeast	1	1
COLLEGE OF THE OZARKS	POINT LOOKOUT	MO	Southwest Plains	1	6B
COUNTRY DELITE FARMS, INC	NASHVILLE	TN	Southeast	1	1
DAIRY FRESH CORP	BAKER	LA	Southeast	1	1
DAIRY FRESH CORP	COWARTS	AL	Southeast	1	1
DAIRY FRESH CORP	HATTIESBURG	MS	Southeast	1	1
DAIRY FRESH CORP	PRICHARD	AL	Southeast	1	1
DASI PRODUCTS, INC	DECATUR	AL	Southeast	2	2
ETOWAH MAID DAIRIES, INC	CANTON	GA	Southeast	4	4
FLAV-O-RICH, INC	CANTON	MS	Southeast	1	1
FOREMOST DAIRY, INC	SHREVEPORT	LA	Southeast	1	1
GEORGIA STATE PRISON	REIDSVILLE	GA	Southeast	6A	6B
GOLD STAR DAIRY	LITTLE ROCK	AR	Southeast	1	1
HERITAGE FARMS DAIRY	MURFREESBORO	TN	Southeast	1	1
HILAND DAIRY CO	FAYETTEVILLE	AR	Southwest Plains	1	1
HILAND DAIRY CO	FORT SMITH	AR	Southwest Plains	1	1
HILAND DAIRY CO	SPRINGFIELD	MO	Southwest Plains	1	1
HUMPHREY DAIRY	HOT SPRINGS	AR	Southeast	3A	3B
KINNETT DAIRIES, INC	COLUMBUS	GA	Southeast	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
KLEINPETER DAIRY, INC	BATON ROUGE	LA	Southeast	1	1
LOUISIANA STATE PENITENTIARY	ANGOLA	LA	Southeast		OOB 12/95
LOUISIANA TECH	RUSTON	LA	Southeast	6A	6B
LUVEL DAIRY PRODUCTS, INC	KOSCIUSKO	MS	Southeast	1	1
MAYFIELD DAIRY	BRASELTON	GA	Southeast	1	1
MEADOW GOLD DAIRIES, INC. (SOUTHERN FOODS GROUP, LP).	HUNTSVILLE	AL	Southeast	1	1
MID-AMERICA DAIRYMEN, INC	LEBANON	MO	Southwest Plains	1	OOB 8/98
MISSISSIPPI STATE UNIVERSITY	MISS. STATE	MS	Southeast	6A	6B
NEW ATLANTA DAIRIES, INC	ATLANTA	GA	Southeast	1	1
PEELER JERSEY FARMS, INC	ATHENS	GA	Southeast	1	1
PUBLIX SUPERMARKETS, INC	LAWRENCEVILLE	GA	Southeast	1	1
PURITY DAIRIES, INC	NASHVILLE	TN	Southeast	1	1
RYAN FOODS COMPANY	MURRAY	KY	Southeast	2	1
SAVANNAH MANUFACTURING COMPANY—A HERSHEY FOODS COMPANY.	SAVANNAH	GA	Southeast	2	2
SOUTHERN UNIVERSITY	BATON ROUGE	LA	Southeast	6A	6B
SUPERBRAND DY. PRODS., INC	HAMMOND	LA	Southeast	1	1
SUPERBRAND DY. PRODUCTS, INC	MONTGOMERY	AL	Southeast	1	1
TURNER HOLDINGS, LLC	COVINGTON	TN	Southeast	1	2
TURNER HOLDINGS, LLC	FULTON	KY	Southeast	1	1
TURNER HOLDINGS, LLC WAS: COLEMAN DAIRY, INC.	LITTLE ROCK	AR	Southeast	1	1
TURNER HOLDINGS, LLC WAS: FOREST HILL DAIRY.	MEMPHIS	TN	Southeast	1	1
Mideast					
ARPS DAIRY, INC	DEFIANCE	OH	Ohio Valley	1	1
BAREMAN DAIRY, INC	HOLLAND	MI	Southern Michigan	1	1
BARKER'S FARM DAIRY, INC	PECKS MILL	WV	Ohio Valley	4	4
BROUGHTON FOODS CO	MARIETTA	OH	Ohio Valley	1	1
BRUNTON DAIRY	ALIQUIPPA	PA	E Ohio-W Penn	4	4
BURGER DAIRY CO	NEW PARIS	IN	Indiana	1	1
BURGER, C.F., CREAMERY, INC	DETROIT	MI	Southern Michigan	2	2
CALDER BROTHERS DAIRY	LINCOLN PARK	MI	Southern Michigan	1	1
COLTERYAHN DAIRY, INC.	PITTSBURGH	PA	E Ohio-W Penn	1	1
CON-SUN FOOD INDUSTRIES, INC	ELYRIA	OH	E Ohio-W Penn	1	1
COOK'S FARM DAIRY, INC	ORTONVILLE	MI	Southern Michigan	4	4
COUNTRY DAIRY	NEW ERA	MI	Southern Michigan	4	4
COUNTY FRESH, INC	GRAND RAPIDS	MI	Southern Michigan	1	1
CROOKED CREEK FARM DAIRY	ROMEO	MI	Southern Michigan	4	4
DEAN DAIRY PRODUCTS CO	SHARPSVILLE	PA	E Ohio-W Penn	1	1
DEAN FOODS COMPANY	ROCHESTER	IN	Indiana	1	1
DIXIE DAIRY CO	GARY	IN	Indiana	1	OOB 4/98
EASTSIDE JERSEY DAIRY, INC	ANDERSON	IN	Indiana	1	1
ELMVIEW DAIRY	COLUMBUS	PA	E Ohio-W Penn	4	OOB 1/97
EMBEST, INC	LIVONIA	MI	Southern Michigan	1	1
FIKE, R BRUCE & SONS DAIRY	UNIONTOWN	PA	E Ohio-W Penn	1	1
FISHER'S DAIRY, R.V. FISHER	PORTERSVILLE	PA	E Ohio-W Penn	4	4
FLEMINGS DAIRY	UTICA	OH	Ohio Valley	1	1
GALLIKER DAIRY CO	JOHNSTOWN	PA	E Ohio-W Penn	2	2
GLEN EDEN FARM-DIANNE TEETS	ROCHESTER	PA	E Ohio-W Penn	4	OOB 11/98
GOSHEN DAIRY COMPANY	NEW PHILADELPHIA	OH	E Ohio-W Penn	1	1
GREEN VALE FARM	COOPERSVILLE	MI	Southern Michigan	4	4
GREEN VALLEY DAIRY	GEORGETOWN	PA	E Ohio-W Penn	1	3B
GUERNSEY FARMS DAIRY	NORTHVILLE	MI	Southern Michigan	1	1
HARTZLER FAMILY DAIRY	WOOSTER	OH	E Ohio-W Penn	1	3B
HILLSIDE DAIRY CO	CLEVELAND HGHTS	OH	E Ohio-W Penn	1	1
HUTTER FARM DAIRY	MT. PLEASANT	PA	E Ohio-W Penn.	4	4
INVERNESS DAIRY, INC	CHEBOYGAN	MI	Michigan U P	1	1
JACKSON FARMS	NEW SALEM	PA	E Ohio-W Penn	4	4
JILBERT DAIRY, INC	MARQUETTE	MI	Michigan U P	1	1
JOHNSON'S DAIRY, INC	ASHLAND	KY	Ohio Valley	1	OOB 5/97
KERBER'S DAIRY	N. HUNTINGDON	PA	E Ohio-W Penn	1	3B
KROGER COMPANY, THE	INDIANAPOLIS	IN	Indiana	1	1
LANSING DAIRY, INC (MELODY FARMS, INC.)	LANSING	MI	Southern Michigan	1	1
LIBERTY DAIRY CO	EVART	MI	Southern Michigan	1	1
LONDON'S FARM DAIRY, INC	PORT HURON	MI	Southern Michigan	1	1
MAPLEHURST FARMS, INC	INDIANAPOLIS	IN	Indiana	1	1
MARBURGER FARM DAIRY, INC	EVANS CITY	PA	E Ohio-W Penn	1	1

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
MCDONALD DAIRY COMPANY	FLINT	MI	Southern Michigan	1	1
MCMAHONS DAIRY, INC	ALTOONA	PA		5	OOB
MEADOW BROOK DAIRY	ERIE	PA	E Ohio-W Penn	1	1
MEYER H & SONS DAIRY	CINCINNATI	OH	Ohio Valley	1	1
MICHIGAN DAIRY	LIVONIA	MI	Southern Michigan	1	1
ALBERT MIHALY & SON DAIRY	LOWELLVILLE	OH	E Ohio-W Penn	4	4
OBERLIN FARMS DAIRY, INC	CLEVELAND	OH	E Ohio-W Penn	1	1
OSBORN DAIRY	SAULT STE MARIE	MI	Michigan U P	4	4
PLEASANT VIEW DAIRY CORP	HIGHLAND	IN	Indiana	1	1
PRAIRIE FARMS DAIRY, INC	FT. WAYNE	IN	Indiana	1	1
PRAIRIE FARMS DAIRY, INC WAS: ROELOF DAIRY.	GALESBURG	MI	Southern Michigan	1	1
QUALITY CREAMERY, INC	COMSTOCK PARK	MI	Southern Michigan	1	OOB 7/98
QUALITY DAIRY CO B.T.U	LANSING	MI	Southern Michigan	1	1
REITER DAIRY CO	SPRINGFIELD	OH	Ohio Valley	1	1
REITER DAIRY, INC	AKRON	OH	E Ohio-W Penn	1	1
SANI DAIRY	JOHNSTOWN	PA	E Ohio-W Penn	2	OOB 1/99
SCHENKEL'S ALL-STAR DAIRY, INC	HUNTINGTON	IN	Indiana	1	1
SCHIEVER FARM DAIRY	HARMONY	PA	E Ohio-W Penn	1	3B
SCHNEIDERS DAIRY, INC	PITTSBURGH	PA	E Ohio-W Penn	1	1
SMITH DAIRY PRODUCTS CO	ORRVILLE	OH	Ohio Valley	1	1
SMITH DAIRY PRODUCTS CO	RICHMOND	IN	Ohio Valley	1	1
STERLING MILK CO	WAUSEON	OH	Ohio Valley	1	1
SUPERIOR DAIRIES, INC	SAGINAW	MI	Southern Michigan	1	1
SUPERIOR DAIRY, INC	CANTON	OH	E Ohio-W Penn	1	1
TAMARACK FARMS	NEWARK	OH	Ohio Valley	1	1
TAYLOR MILK CO., INC	AMBRIDGE	PA	E Ohio-W Penn	2	OOB 11/98
THE SPRINGHOUSE	EIGHTY FOUR	PA	E Ohio-W Penn	4	4
TOFT DAIRY INC	SANDUSKY	OH	Ohio Valley	2	2
TOLEDO MILK PROCESSING, INC. (COUNTRY FRESH OF OHIO).	MAUMEE	OH	Ohio Valley	1	1
TRAUTH, LOUIS DAIRY	NEWPORT	KY	Ohio Valley	1	1
TURNER DAIRY FARMS, INC	PITTSBURGH	PA	E Ohio-W Penn	1	1
UNITED DAIRY FARMERS	CINCINNATI	OH	Ohio Valley	1	1
UNITED DAIRY, INC	CHARLESTON	WV	Ohio Valley	1	1
UNITED DAIRY, INC	MARTINS FERRY	OH	E Ohio-W Penn	1	1
VALLEY RICH DAIRY	ROANOKE	VA	Ohio Valley	2	2
WHITE KNIGHT PACKAGING CORP. (PARMALAT WHITE KNIGHT PKG. CORP.).	WYOMING	MI	Southern Michigan	1	1
YOUNG'S JERSEY DAIRY, INC	YELLOW SPRINGS	OH	Ohio Valley	4	4
Upper Midwest					
AYSTA DAIRY, INC	VIRGINIA	MN	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	FARGO	ND	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	GRAND FORKS	ND	Upper Midwest	1	1
CASS-CLAY CREAMERY, INC	MANDAN	ND	Upper Midwest	2	2
CENTRAL MINNESOTA	SAUK CENTRE	MN	Upper Midwest	1	1
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	BISMARCK	ND	Upper Midwest	2	2
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	THIEF RIVER FALLS	MN	Upper Midwest	1	1
COUNTRY LAKE FOODS, INC. (LAND O'LAKES, INC.).	WOODBURY	MN	Upper Midwest	1	1
DEAN FOODS CO	HARVARD	IL	Chicago Regional	1	1
DEAN FOODS CO	HUNTLEY	IL	Chicago Regional	1	1
FOREMOST FARMS USA	DEPERE	WI	Chicago Regional	1	1
FOREMOST FARMS USA	WAUKESHA	WI	Chicago Regional	1	1
FOREMOST FARMS USA	WAUSAU	WI	Chicago Regional	1	1
FRANKLIN FOODS	DULUTH	MN	Upper Midwest	1	1
HANSENS DAIRY, INC	GREEN BAY	WI	Chicago Regional	2	OOB 1/99
HASTINGS COOPERATIVE	HASTINGS	MN	Upper Midwest	1	1
KOHLER MIX SPECIALTIES, INC	WHITE BEAR LAKE	MN	Upper Midwest	2	2
KWIK TRIP DAIRY	LA CROSSE	WI	Chicago Regional	1	1
LAMERS DAIRY, INC	KIMBERLY	WI	Chicago Regional	2	1
LIFEWAY FOODS, INC	SKOKIE	IL	Chicago Regional	2	1
MARIGOLD FOODS, INC	CEDARBURG	WI	Chicago Regional	1	1
MARIGOLD FOODS, INC	MINNEAPOLIS	MN	Upper Midwest	1	1
MARIGOLD FOODS, INC	ROCHESTER	MN	Upper Midwest	1	1
MEYER BROTHERS DAIRY	WAYZATA	MN	Upper Midwest	1	1
MOM'S DAIRY	GIBBON	MN	Upper Midwest	[2]	3B

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
MULLER-PINEHURST, INC	ROCKFORD	IL	Chicago Regional	1	1
NORTH BRANCH DAIRY, INC	NORTH BRANCH	MN	Upper Midwest	1	OOB 7/98
OAK GROVE DAIRY	NORWOOD	MN	Upper Midwest	1	1
OBERWEIS DAIRY, INC	AURORA	IL	Chicago Regional	1	1
POLLARD DAIRY, INC	NORWAY	MI	Michigan U P	1	1
SCHROEDER MILK CO., INC	ST PAUL	MN	Upper Midwest	1	1
STAR SPECIALTY FOODS, INC. (MORNING-STAR FOODS, INC.).	MADISON	WI	Chicago Regional	1	2
SWISS VALLEY FARMS CO	CHICAGO	IL	Chicago Regional	1	1
TETZNER DAIRY	WASHBURN	WI	Upper Midwest	4	4
UNITED WORLD IMPORTS	CHICAGO	IL	Chicago Regional	2	3B
VERIFINE DAIRY PRODUCTS CO	SHEBOYGAN	WI	Chicago Regional	1	1
WEBERS, INC	MARSHFIELD	WI		5	3B
Central					
ALBERS DAIRY	BARTELSO	IL	S Ill-E Missouri	[2]	4
ANDERSON-ERICKSON DAIRY CO	DES MOINES	IA	Iowa	1	1
W.H. BRAUM, INC	TUTTLE	OK	Southwest Plains	1	1
CENTRAL DAIRY & ICE CREAM	JEFFERSON CITY	MO		5	5
CHESTER DAIRY CO	CHESTER	IL	S Ill-E Missouri	1	1
DAIRY GOLD FOODS CO	CHEYENNE	WY	Eastern Colorado	1	1
DEPT. OF CORRECTIONS	CANON CITY	CO	Eastern Colorado	4	6B
DILLON DAIRY CO	DENVER	CO	Eastern Colorado	1	1
ELDON MOSS	IOWA CITY	IA	Iowa	4	4
FARM FRESH DAIRY, INC	CHANDLER	OK	Southwest Plains	1	1
GALESBURG CORR. CENTER	GALESBURG	IL	Central Illinois	6A	6B
GILLETTE DAIRY OF BLACK HILLS	RAPID CITY	SD		2	2
GRAFF DAIRY, LLC	GRAND JUNCTION	CO	Western Colorado	1	3B
GRAVES DAIRY	BELLVUE	CO	Eastern Colorado	4	4
HILAND DAIRY CO	NORMAN	OK	Southwest Plains	1	1
HILAND DAIRY CO	WICHITA	KS	Southwest Plains	1	1
JACKSON ICE CREAM CO	HUTCHINSON	KS	Southwest Plains	1	1
KANSAS STATE UNIV	MANHATTAN	KS	Greater Kansas City	6A	6B
KARL'S FARM DAIRY, INC	NORTH GLENN	CO	Eastern Colorado	4	4
LAESCH DAIRY CO	BLOOMINGTON	IL	S Ill-E Missouri	1	OOB 6/98
LAND O'LAKES, INC. FLUID DAIRY DIVISION	SIOUX FALLS	SD	E South Dakota	1	1
LAND–O–SUN DAIRIES, INC	O'FALLON	IL	S Ill-E Missouri	1	1
LENZ DAIRY	PRAIRIE HOME	MO	Greater Kansas City	4	4
LONGMONT DAIRY FARM	LONGMONT	CO	Eastern Colorado	4	4
LOWELL–PAUL DAIRY, INC	GREELEY	CO	Eastern Colorado	4	4
MARTIN DAIRY, INC	HUMANSVILLE	MO	S Ill-E Missouri	[2]	4
MEADOW GOLD DAIRIES, INC	DELTA	CO	Western Colorado	1	1
MEADOW GOLD DAIRIES, INC	ENGLEWOOD	CO	Eastern Colorado	1	1
MEADOW GOLD DAIRIES, INC	GREELEY	CO	Eastern Colorado	1	1
MEADOW GOLD DAIRIES, INC	LINCOLN	NE	Nebraska-W Iowa	1	1
MEADOW GOLD DAIRIES, INC	TULSA	OK	Southwest Plains	1	1
MID–STATES DAIRY COMPANY	HAZELWOOD	MO	S Ill-E Missouri	1	1
PATKE FARM DAIRY	WASHINGTON	MO	S Ill-E Missouri	1	3B
PEVELY DAIRY CO	ST LOUIS	MO	S Ill-E Missouri	1	1
PRAIRIE FARM DAIRIES, INC	CARLINVILLE	IL	S Ill-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	GRANITE CITY	IL	S Ill-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	OLNEY	IL	S Ill-E Missouri	1	1
PRAIRIE FARMS DAIRY, INC	PEORIA	IL	Central Illinois	1	1
PRAIRIE FARMS DAIRY, INC	QUINCY	IL	S Ill-E Missouri	1	1
RADIANCE DAIRY	FAIRFIELD	IA	Iowa	4	4
ROBERTS DAIRY CO	DES MOINES	IA	Iowa	1	1
ROBERTS DAIRY CO	IOWA CITY	IA	Iowa	1	1
ROBERTS DAIRY CO	KANSAS CITY	MO	Greater Kansas City	1	1
ROBERTS DAIRY CO	OMAHA	NE	Nebraska-W Iowa	1	1
ROBINSON DAIRY, INC	DENVER	CO	Eastern Colorado	1	1
ROYAL CREST DAIRY, INC	DENVER	CO	Eastern Colorado	1	1
SAFEWAY STORES, INC	DENVER	CO	Eastern Colorado	1	1
SCHRANT ROADSIDE DAIRY (ROADSIDE DAIRY).	WINSIDE	NE	Nebraska-W Iowa	4	4
SHOENBERG FARMS, INC. DBA FARM FRESH, INC.	ARVADA	CO	Eastern Colorado	1	1
SINTON DAIRY FOODS CO., LLC	COLORADO SPRINGS	CO	Eastern Colorado	1	1
SOUTH DAKOTA STATE UNIV	BROOKINGS	SD	E South Dakota	6A	6B
STAR DAIRY, INC	MULHALL	OK	Southwest Plains	([2])	4
SWAN BROS. DAIRY, INC	CLAREMORE	OK	Southwest Plains	4	4

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
SWISS VALLEY FARMS CO	CEDAR RAPIDS	IA	Chicago Regional	1	3B
SWISS VALLEY FARMS CO	DUBUQUE	IA	Chicago Regional	1	1
WELLS DAIRY, INC	LE MARS	IA	Nebraska-W Iowa	1	1
WELLS DAIRY, INC	OMAHA	NE	Nebraska-W Iowa	1	1
WESTERN DAIRYMEN COOP, INC	RIVERTON	WY	Eastern Colorado	2	OOB 11/97
WILD'S BROTHER'S DAIRY	EL RENO	OK	Southwest Plains	4	4
Southwest					
BELL DAIRY PRODUCTS, INC	LUBBOCK	TX	New Mex-W Texas	1	1
CREAMLAND DAIRIES	ALBUQUERQUE	NM	New Mex-W Texas	1	1
DAVID'S SUPERMARKETS, INC	GRANDVIEW	TX	Texas	1	1
FARMERS DAIRIES	EL PASO	TX	New Mex-W Texas	1	1
HOBBS DRIVE IN DAIRY	HOBBS	NM	New Mex-W Texas	4	OOB 8/98
HYGEIA DAIRY	CORPUS CHRISTI	TX	Texas	1	1
H. E. BUTTS GROCERY CO	HOUSTON	TX	Texas	1	1
H. E. BUTTS GROCERY CO	SAN ANTONIO	TX	Texas	1	1
LAND O' PINES	LUFKIN	TX	Texas	1	OOB 3/97
LANE'S DAIRY	EL PASO	TX	New Mex-W Texas	4	4
LILLY DAIRY PRODUCTS, INC	BYRAN	TX	Texas	1	1
LOS LUNAS DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	4	4
MICKEY'S DRIVE IN DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	4	4
MIDWEST MIX CO	SULPHUR SPRINGS	TX	Texas	2	2
MILK PRODUCTS, LLC WAS: BORDEN, INC	ALBUQUERQUE	NM	New Mex-W Texas	1	OOB 6/98
MILK PRODUCTS, LLC WAS: BORDEN, INC	AUSTIN	TX	Texas	1	1
MILK PRODUCTS, LLC WAS: BORDEN, INC	CONROE	TX	Texas	1	1
MILK PRODUCTS, LLC WAS: BORDEN, INC	DALLAS	TX	Texas	1	1
MILK PRODUCTS, LLC WAS: BORDEN, INC	EL PASO	TX	New Mex-W Texas	1	OOB 7/87
MORNINGSTAR SPECIALTY	SULPHUR SPRINGS	TX	Texas	2	2
MOUNTAIN GOLD DAIRY	CARRIZOZO	NM	New Mex-W Texas	3A	3B
NATURE'S DAIRY, INC	ROSWELL	NM	New Mex-W Texas	4	4
OAK FARMS DAIRIES	DALLAS	TX	Texas	1	1
OAK FARMS DAIRIES	HOUSTON	TX	Texas	1	1
OAK FARMS DAIRIES	SAN ANTONIO	TX	Texas	1	1
OAK FARMS DAIRIES WAS: PURE MILK COMPANY.	WACO	TX	Texas	1	1
PLAINS CREAMERY	AMARILLO	TX	New Mex-W Texas	1	1
PRICES CREAMERY, INC	EL PASO	TX	New Mex-W Texas	1	1
PROMISED LAND DAIRY	FLORESVILLE	TX	Texas	4	4
RANCHO LAS LAGUNAS	SANTA FE	NM	New Mex-W Texas	3A	3B
RASBAND DAIRY	ALBUQUERQUE	NM	New Mex-W Texas	4	4
SCHEPPS DAIRY, INC	DALLAS	TX	Texas	1	1
SOUTHWEST DAIRY	TYLER	TX	Texas	1	1
SUPERBRAND DAIRY PRODS, INC	FT WORTH	TX	Texas	1	1
VANDERVOORTS DAIRY	FT WORTH	TX	Texas	1	1
Arizona-Las Vegas					
ANDERSON DAIRY, INC	LAS VEGAS	NV	Great Basin	1	1
GOLDEN WEST DAIRIES	WELLTON	AZ	Central Arizona	4	OOB 9/98
HETTINGA, HEIN & ELLEN	YUMA	AZ	Central Arizona	4	4
JACKSON & COMPANY	PHOENIX	AZ	Central Arizona	1	1
MEADOWWAYNE DAIRY	COLORADO CITY	AZ	Central Arizona	5	4
SAFEWAY STORES, INC	TEMPE	AZ	Central Arizona	1	1
SHAMROCK FOODS COMPANY	PHOENIX	AZ	Central Arizona	1	1
SMITH'S FOOD & DRUG CENTERS, INC	TOLLESON	AZ	Central Arizona	1	1
SUNRISE DAIRY	TAYLOR	AZ		5	3B
Western					
BRIGHAM YOUNG UNIVERSITY	PROVO	UT	Great Basin	6A	6B
BROWN DAIRY, INC	HOYTSVILLE	UT	Great Basin	4	4
CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS.	SALT LAKE CITY	UT	Great Basin	6A	6B
COUNTRY BOY DAIRY	OGDEN	UT	Great Basin	4	4
CREAM O'WEBER DAIRY, INC	SALT LAKE CITY	UT	Great Basin	1	1
DARIGOLD, INC	BOISE	ID	SW Idaho-E Oregon	1	1
FALCONHURST DAIRY, INC	BUHL	ID	Great Basin	1	1
FARM FRESH	SALEM	UT	Great Basin	1	OOB 8/98
GOSSNER FOODS, INC	LOGAN	UT	Great Basin	1	1
IDEAL DAIRY, INC	RICHFIELD	UT	Great Basin	4	4

LIST OF PLANTS AND REGULATORY STATUS—Continued

Plant name	City	State	October 1997	Order/ status [1]	Expected status [1]
JOHNNY'S DAIRY	SOUTH WEBER	UT	Great Basin	4	4
JONES DAIRY & HEALTH FOODS	TAYLORSVILLE	UT	Great Basin	3A	OOB 12/98
KDK, INC	DRAPER	UT	Great Basin	1	1
MEADOW GOLD DAIRIES, INC	BOISE	ID	SW Idaho-E Oregon	1	1
MEADOW GOLD DAIRIES, INC	POCATELLO	ID	Great Basin	1	1
MEADOW GOLD DAIRIES, INC	SALT LAKE CITY	UT	Great Basin	1	1
MODEL DAIRY	RENO	NV	Great Basin	2	2
REED'S DAIRY, INC	IDAHO FALLS	ID	Great Basin	4	4
ROSEHILL DAIRY	MORGAN	UT	Great Basin	4	4
SLADES DAIRY WAS: DALE BARKER	MOUNT PLEASANT	UT	Great Basin	4	4
SMITH FOOD & DRUG CENTERS, INC	LAYTON	UT	Great Basin	1	1
SMITH'S DAIRY	BUHL	ID	SW Idaho-E Oregon	1	3B
STOKER WHOLESALE, INC	BURLEY	ID	SW Idaho-E Oregon	1	1
UTAH STATE PRISON	DRAPER	UT	Great Basin	6A	6B
UTAH STATE UNIVERSITY	LOGAN	UT	Great Basin	3A	6B
WESTERN QUALITY FOOD PRODUCTS	CEDAR CITY	UT	Great Basin	2	2
WINDER DAIRY	SALT LAKE CITY	UT	Great Basin	1	1
Pacific Northwest					
ALLISON HARDY	ELMA	WA	Pacific Northwest	4	OOB 5/98
ALPENROSE DAIRY	PORTLAND	OR	Pacific Northwest	1	1
ANDERSEN DAIRY, INC	BATTLE GROUND	WA	Pacific Northwest	1	1
BRANDSMA, EDWARD & AILEEN	LYNDEN	WA	Pacific Northwest	4	4
CURLY'S DAIRY, INC	SALEM	OR	Pacific Northwest	1	1
DARIGOLD, INC	MEDFORD	OR	Pacific Northwest	1	1
DARIGOLD, INC	PORTLAND	OR	Pacific Northwest	1	1
DARIGOLD, INC	SEATTLE	WA	Pacific Northwest	1	1
DE JONG, WALTER	MONROE	WA	Pacific Northwest	4	OOB 8/98
EBERHARD CREAMERY, INC	REDMOND	OR	Pacific Northwest	1	1
ECHO SPRING DAIRY, INC	EUGENE	OR	Pacific Northwest	1	1
EVERGREEN DAIRY, INC. (WEIKS)	OLYMPIA	WA	Pacific Northwest	4	OOB 5/96
FAITH DAIRY, INC	TACOMA	WA	Pacific Northwest	4	4
FRED MEYER, INC	PORTLAND	OR	Pacific Northwest	1	1
GILBERT, GERALD, ET AL	OTHELLO	WA	Pacific Northwest	4	4
GRAAFSTRA DAIRY, INC	ARLINGTON	WA	Pacific Northwest	4	4
HARVEY, MIKE	VANCOUVER	WA	Pacific Northwest	4	4
INLAND NORTHWEST DAIRIES, LLC	SPOKANE	WA	Pacific Northwest	1	1
KROPF, ROY	HALSEY	OR	Pacific Northwest	4	OOB 9/98
LOCHMEAD FARMS, INC	JUNCTION CITY	OR	Pacific Northwest	4	4
MALLORIE'S DAIRY, INC	SILVERTON	OR	Pacific Northwest	4	4
PACIFIC FOODS OF OREGON, INC	CLACKAMAS	OR	Pacific Northwest	1	3B
SAFEWAY 85, INC	MOSES LAKE	WA	Pacific Northwest	1	1
SAFEWAY STORES, INC	BELLEVUE	WA	Pacific Northwest	1	1
SAFEWAY STORES, INC	CLACKAMAS	OR	Pacific Northwest	1	1
SMITH BROTHERS FARMS, INC	KENT	WA	Pacific Northwest	4	4
SPRINGFIELD CREAMERY	EUGENE	OR		3A	3B
STATE OF OREGON DEPARTMENT OF CORRECTIONS.	SALEM	OR	Pacific Northwest	2	3B
STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS.	MONROE	WA	Pacific Northwest	4	2
STRATTON, WARD	PULLMAN	WA	Pacific Northwest	4	4
SUNSHINE DAIRY, INC	PORTLAND	OR	Pacific Northwest	1	1
TILLAMOOK COUNTY CREAMERY ASSN	TILLAMOOK	OR	Pacific Northwest	1	2
UMPQUA DAIRY PRODUCTS CO., INC	ROSEBURG	OR	Pacific Northwest	1	1
VENN, WILLIAM (TIMOTHY & SUSAN BERNDT)	NORTH BEND	WA	Pacific Northwest	4	4
VITAMILK DAIRY, INC	SEATTLE	WA	Pacific Northwest	1	1
WAGNER, PAUL B. & SHARON	PORT ORFORD	OR		5	3B
WILCOX DAIRY FARMS, LLC	CHENEY	WA	Pacific Northwest	1	1
WILCOX DAIRY FARMS, LLC	ROY	WA	Pacific Northwest	1	1
WINEGAR, GARY & MARGO	ELLENSBURG	WA	Pacific Northwest	1	OOB 7/97
PALMER ZOTTOLA DBA VALLEY OF THE ROGUE DAIRY.	GRANTS PASS	OR	Pacific Northwest	1	1

[1] Distributing plant status (as determined from October 1997 Data):
1: Pool.
2: Partially Regulated.
3: Exempt based on size:
A. As defined under current federal orders.
B. As defined under proposed rule; with route disposition less than 150,000 lbs. per month.
4: Producer-Handler.
5: UNREGULATED.
6: Exempt based on institutional status:

A. As defined under current Federal orders.
B. As defined under proposed orders (Government, university, and charitable).
[2] New—No data for October 1997: Information not included in analysis.

2. Basic Formula Price Replacement and Other Class Price Issues

This rule closely follows the pricing plan described in the proposed rule by replacing the current basic formula price (BFP) with a multiple component pricing system that derives component values from surveyed prices of manufactured dairy products. The adopted pricing system determines butterfat prices for milk used in Class II, Class III and Class IV products from a butter price; protein and other solids prices for milk used in Class III products from cheese and whey prices; and nonfat solids prices for milk used in Class II and Class IV products from nonfat dry milk product prices.

The calculation of the Class I skim milk and butterfat prices for each order, determined in the proposed rule by computing a six month declining average of the higher of the Class III or Class IV skim milk prices for the second preceding month and adding a fixed Class I differential to the result, has been changed to reflect more closely the value of milk used in manufacturing. The Class I skim price for a month will be determined by adding the fixed Class I differential for each order to the higher of a Class III or IV skim value, calculated from product prices reported by NASS for the most recent two-week period for which prices are available on the 23rd day of the previous month. Similarly, the Class I butterfat price will be calculated by adding the fixed Class I differential divided by 100 to a butterfat value computed by using product prices for the same two-week period.

The price of Class II skim milk for a month will be computed by the sum of a Class IV skim price per hundredweight, calculated from product prices reported by NASS for the most recent two-week period for which prices are available on the 23rd day of the previous month, and the 70-cent Class II differential. The Class II butterfat price will be determined from the NASS-reported butter price, as in Classes III and IV, plus .7 cents per pound to incorporate the Class II differential. This price will be announced on the 5th day of the month and apply to butterfat in Class II during the previous month.

A table showing current and re-calculated prices for the period 1994 through 1997 appears at the end of this discussion of the BFP replacement. The basis for re-calculating the prices is described later in this discussion.

Provisions for Federal milk orders regulating the handling of milk in areas for which a multiple component pricing system has not been adopted will maintain a hundredweight skim/butterfat pricing system instead of the component pricing plan. The hundredweight prices will be determined by using the component price formulas contained in this decision to compute corresponding hundredweight prices using standard component levels.

Background

The proposed rule described in some detail the development in the early 1960's of the Minnesota-Wisconsin manufacturing grade milk price series (M–W) as a means of identifying a price determined by supply and demand for milk used in manufactured dairy products. Also described were the developments that have made the M–W less representative of the value of milk used in manufactured products. The two primary trends making the M–W less representative over the last four decades are the declining volume of Grade B (manufacturing grade) milk and the declining numbers of plants from which payments could be reported to update the base month price.

The problem of the declining number of plants from which payments could be reported to update the base month M–W survey of two months previous was addressed in 1995 by using an updating formula that uses changes from the base month to the next month in prices paid for butter, nonfat dry milk, and cheese. However, the problem of using a declining volume of Grade B milk to accurately represent the value of milk used for manufacturing was not solved with the implementation of the current BFP. The decision based on the basic formula price hearing recognized that ''the adoption of the base month M–W price, or any Grade B milk series, is only a short term solution, since the amount of Grade B milk production is expected to continue declining.''

Process

The Basic Formula Price Replacement Committee was one of several committees formed to deal with specific issues involved in restructuring the Federal milk order system pursuant to the 1996 Farm Bill. The Committee established goals and criteria for a new BFP, hosted a July 1996 public forum on dairy price discovery techniques in Madison, Wisconsin, and considered over 1,600 comments submitted by interested persons relative to the basic formula price in response to the May 1996 invitation to comment on Federal Order restructuring. The Committee conducted extensive study and analysis, worked with a University Study Committee (USC) commissioned to conduct objective analysis of the performance of numerous alternatives to the current basic formula price, and issued a preliminary report on BFP replacement in April 1997. The Committee studied the comments responding to the preliminary report, as well as those received earlier, in the development of the BFP replacement portion of the proposed rule, which was published in January 1998.

The goals and criteria to be met by a replacement for the basic formula price were discussed in detail in the proposed rule. Briefly, the goals are: (a) Meet the supply and demand criteria set forth in the Agricultural Marketing Agreement Act of 1937 (the Act), (b) not deviate greatly from the general level of the current BFP, and (c) demonstrate the ability to change in reaction to changes in supply and demand.

The criteria established to evaluate the various alternatives were: (a) Stability and predictability; (b) simplicity, uniformity, and transparency; (c) sound economics—e.g., consistency with market conditions; and (d) reduced regulation.

Comments

Of the more than 1,600 comments received relative to the basic formula price in response to the May 1996 invitation to comment on Federal Order restructuring, most favored one or more of five categories of alternatives to the current BFP. These five alternatives were: Economic formulas, futures markets, cost of production, competitive pay price, and product price and component formulas. In addition, numerous comments were received relative to the use of National Cheese Exchange prices in particular and exchange prices in general in the determination of a basic formula price.

After publication of the proposed rule in January 1998, nearly 600 comments were received relating to some aspect of the basic formula price replacement. Approximately 450 of these comments were form letters or very general in nature. For the most part, comments that related specifically to the proposal

supported the use of product price formulas and the use of surveyed product prices to calculate component prices in determining the value of milk. Many of the comments, however, suggested modifications to the proposed rule. These comments are addressed in the discussion of each of the individual topics involved in these pricing issues.

The only alternative previously considered that retained considerable support from producer organizations was a competitive pay price. In addition, many individual producer comments continued to advocate cost of production or a floor for the BFP ranging from $14.50 to $18.00. Some producers also suggested letting the market determine prices, and a few suggested supply management to ensure that farmers receive fair milk prices. One processor opposed product price formulas, suggesting that futures are the preferred tool used by markets to manage risk. Several producers supported basing producer prices on retail prices, while a state senator from Wisconsin suggested paying producers on the quality and quantity of their milk.

As noted in the proposed rule, the reason the USC dropped cost of production from consideration was that cost of production represents only the supply side of the market, ignoring factors underlying demand or changes in demand for milk and milk products.

Competitive Pay Price

Although some producer groups submitted comments on the proposed rule that continued to support use of a competitive pay price for determining the BFP replacement, a number of these comments stated that the pricing proposal contained in the proposed rule was one they could support. Other commenters continued to express the view that a competitive pay price is the best indicator of the national supply and demand for milk and that continuing to use such a price would provide a simple, economically defensible method of calculating the true value of milk used in manufactured dairy products.

Several proponents suggested including a competitive pay price for Grade A milk, with some adjustments, as a way to improve the size and representativeness of the competitive pay price.

As described in the proposed rule, a competitive pay price to be used as a BFP must represent the result of open market negotiation between dairy farmers (or their cooperatives) and milk processors. Competition requires sufficient numbers of buyers and sellers so that no one participant or group of participants can unduly influence the price. In addition, the price cannot be a Federal- or State-regulated price, such as the price for Grade A milk currently priced under Federal milk orders.

Identification of a competitive pay price in today's dairy industry, where 70 percent of the milk is currently covered under Federal milk marketing orders, appears to be an unsurmountable challenge. After accounting for state regulations, only about two percent of Grade A milk is unregulated, and it is unlikely that even this small amount of milk is not affected by regulated prices. Only about five percent of the total milk marketed in the U.S. is Grade B or unregulated, and 42 percent of that milk is located in Minnesota and Wisconsin. The remainder is scattered among 23 states in amounts too small and delivered to too few processing plants to generate a competitive pay price. In areas where alternative markets exist, the price for unregulated milk likely is not below the price paid for regulated milk, since producers would prefer to sell their milk to regulated handlers to receive the higher regulated price. Thus, unregulated handlers are compelled to meet the regulated price in order to attract sufficient supplies of milk. The circular result is that the regulated price ultimately becomes the competitive price. This process does not lead to a representative competitive pay price for milk.

The concept of a competitive pay price has appeal from the standpoint of sound economics. However, serious concerns must be raised about the degree of competition reflected in a price based on the declining volume of Grade B milk produced and purchased, or the introduction of Grade A milk that, even if unregulated, is significantly influenced by minimum order prices and therefore suspect as a ''competitive'' price.

The proposed rule contained a description of a BFP Replacement Committee attempt to determine a competitive pay price series that included nine states' pay prices for Grade A milk used in manufacturing, with the prices adjusted for protein content, performance premiums, over-order premiums, and hauling subsidies. The nine states accounted for approximately 75% of the Grade A milk used for manufacturing in the U.S.

The reduced price level that resulted from the study was explained in terms of currently effective pay prices in the states included in the survey and the heavier weighting of milk used in butter/powder production than in the current BFP. In addition to the negative aspects of the reduced price level and the uncertainty of being able to identify prices paid to producers that are not influenced by regulated prices, the USC analysis found that two competitive pay price series that passed the USC's level one criteria were questionable in their ability to reflect the manufactured milk market. Neither performed well when tested using the level two criteria and therefore were dropped from further consideration.

Product Price Formulas and Component Pricing

Most comments filed in response to the proposed rule supported adoption of the use of product price formulas to derive multiple component prices for most markets as a viable market-oriented alternative to the current basic formula price. Favorable comments expressed the opinion that a price determined from the national finished product markets more accurately reflects the value of milk for manufacturing than other methods of determining a milk price. The price handlers can afford to pay for milk is determined by the price for which the finished product can be sold. Therefore, a pricing system that translates finished product prices to a price for raw milk results in a representative raw milk price for both producers and handlers. Component pricing, with prices determined for butterfat, protein, nonfat solids, and ''other solids'' (solids other than protein), can best be accomplished through product price formulas, to reflect the value of each component in finished product prices. The product price formulas adopted in this rule are relatively easy to use and understand, and the value of milk may be computed on an on-going basis by everyone in the dairy industry by following commodity markets.

Because milk used in manufactured products obtains its value from the components of milk, it is the components that should be priced; particularly butterfat and protein, and to a lesser extent the other solids contained in the milk.

Opposition to product price formulas was directed primarily at the need for establishing product yields and make allowances in determining a milk price or component prices. Opponents expressed the view that yields and make allowances would not reflect actual processing yields and costs in manufacturing plants, and therefore would not yield an accurate price for milk. Opponents further explained that when yields and make allowances are determined, they would be difficult to adjust and would not react to changes

in manufacturing conditions. Opponents also argued that when an incorrect make allowance is established, plants are guaranteed a return, or profit, to the detriment of dairy farmers. Some comments even described the make allowance as an unfair charge paid by dairy farmers to processors to have their milk made into products. Other opponents explained that an incorrect yield or make allowance may force payment for milk at a level that would not allow a return to the manufacturing plant.

The USC tested several product price formulas, including a one-class multiple component pricing formula and a set of formulas similar to the formulas recommended in this decision. Based on the results of the USC analysis measured against several criteria, the multiple component pricing formulas had the best overall performance of any of the alternatives considered.

Commodity Prices

As recommended in the proposed rule and contained in this final decision, commodity prices determined by surveys conducted by the USDA's National Agricultural Statistics Service (NASS) will be used in the formulas that replace the BFP. A considerable number of comments were received concerning the use of commodity prices in determining prices for milk used in manufactured dairy products. Most of those commenting supported use of a price survey, but many commenters urged that participation be mandatory and reported prices audited, with the survey enlarged to include plants representing the entire nation so that the prices are truly representative.

Proponents of the NASS surveys explained that the NASS data is unbiased and would yield accurate representative prices of the products that are being marketed. Several comments contained specific recommendations for product categories to be surveyed to obtain the most accurate representative result.

NASS data traditionally have been collected via a survey with voluntary participation. The price information in the current cheese price survey, like most NASS data, is not audited. NASS applies various statistical techniques and cross-checking with other sources to provide the most reliable information available.

At the present time there appears to be no need for the suggested changes to the proposed surveys. The scope of the surveys that have been undertaken by NASS, and their geographic representation, appears to be comprehensive. Unless there is some indication that the prices gathered by the survey process are not representative, the very significant increase in regulation required to audit those prices and the steps that would need to be taken to make participation mandatory would be excessive and are not anticipated to be undertaken at this time.

Several alternatives to a NASS price survey were considered. There is a weekly cash butter contract trading on the Chicago Mercantile Exchange (CME). This contract is currently used to establish the butterfat differential and butterfat price in all federal milk orders. This price series has been criticized due to the ''thinness'' of trading. Dairy Market News (DMN) publishes regional wholesale butter prices. However, since DMN price series cover cash or short-term contract transactions, they may not be representative of the predominant long-term contracts. Criticism of cheese exchange trading, including inaccurate representation of cheese prices and accusations of market manipulation, reached the point that the National Cheese Exchange (NCE) discontinued trading, and cash trading of cheese moved to the CME. The CME also has received some criticism for thinness of trading.

There is very limited exchange trading of nonfat dry milk. Other alternatives to a NASS survey for nonfat dry milk and dry whey are limited to prices published by Dairy Market News (DMN). The prices reported by DMN are generally considered to be representative of the dry product markets. However, the prices are reported as a range. A simple average of the prices is used to compute a monthly price and may not reflect the weighted average price at which the product moved. The DMN prices are not intended to establish prices but are provided for market information.

The NASS ''Dairy Products Prices'' reports wholesale cheese prices which are used to compute the current BFP. The NASS survey requests prices for cheddar cheese. The instructions for the survey specify what should and should not be included in the reported prices. The instructions state that a sale occurs when a transaction is completed, cheese is ''shipped out'', or title transfer occurs. Prices for cheddar cheese only are to be reported f.o.b. the processing plant/storage center. Prices should be for ''bare'' or ''naked'' cheese with only the minimum packaging required for 40-pound blocks. Processors are asked to include all sales transactions of 40-pound blocks and barrel cheese 4–30 days old, the total volume sold, the total dollars received, or price per pound, and the moisture content of barrel cheese when it is sold. Intra-company sales, forward pricing sales, resales, transportation charges, clearing charges, and block cheese that will be aged should not be included.

At the time the proposed rule was published the NASS survey included prices for cheddar cheese only. Since publication of the proposed rule, NASS has begun surveys of Grade AA butter prices, dry whey prices, and nonfat dry milk prices. These surveys incorporate input from the dairy industry on appropriate types of products, packaging, and package sizes to be included for the purpose of obtaining unbiased representative prices. A sale is considered to occur when a transaction is completed, the product is shipped out or title transfer occurs. In addition, all prices are f.o.b. the processing plant/storage center, with the processor reporting total volume sold and total dollars received or price per pound.

Butter prices are for USDA Grade AA butter with 80 percent butterfat, salted, fresh or ''storage,'' in 25-kilogram and 68-pound boxes. Processors are instructed not to include transportation charges, unsalted butter, Grade A butter, intra-company sales, forward pricing sales, and resales.

Nonfat dry milk prices are for USDA Extra Grade or USPH Grade A non-fortified dry milk in 25-kilogram bags, 50-pound bags, or ''totes,'' and tanker sales. Several commenters suggested excluding nonfat dry milk processed with high heat treatment since such product is a higher-cost specialty product, making its price unrepresentative of the nonfat dry milk market. As a result of the comments, it was determined that only low and medium heat process nonfat dry milk should be included in the price survey. The instructions inform processors to exclude transportation charges, sales of product more than 180 days old, instant nonfat dry milk, dry buttermilk, intra-company sales, forward pricing sales, and resales.

Dry whey prices are for USDA Extra Grade edible nonhygroscopic dry whey in 25-kilogram bags, 50-pound bags, ''totes,'' and tanker sales. As is the case with the other commodities, transportation charges, intra-company sales, forward pricing sales, and resales are to be excluded as well as sales of product more than 180 days old.

Several comments expressed concern about the ''circularity'' of survey pricing that could be caused by including sales whose price is based on previous survey information. According to this view, NASS-reported prices would cease to reflect market supply and demand, with

market prices reflecting NASS-reported prices instead. These comments stated that the current pricing system relies on the market (in the form of the base month M-W survey) to correct survey results.

Under any method of discovering prices, whether those paid to producers or those paid for manufactured dairy products, prices currently known will be used as one of the determinants of prices for the following period. Under the current pricing system, it is inconceivable that handlers paying Grade B producers for their milk used in manufactured products do not consider the most recently announced prices as a starting point for determining what prices to pay their producers. When butter and cheese prices are determined at an exchange, both buyers and sellers use the exchange prices in arriving at the prices at which products will move. Ultimately, prices move in response to supply and demand conditions in the marketplace.

Basic Formula Price Replacement

Application of the BFP and USC Committees' criteria for BFP replacement to the various BFP alternatives and consideration of comments received in response to the proposed rule resulted in the determination that the component pricing product price formulas contained in this final rule best meet the stated goals and criteria for the replacement of the BFP.

A BFP based on commodity prices is subject to the same problems of stability as the underlying commodity prices. For the most part product price formulas do not reduce the volatility in producer milk prices.

Product price formulas are relatively simple to compute and understand, and may be applied uniformly, or on a regional basis, accommodating differences in yields or make allowances. Product prices established in a relatively free and open interaction between supply and demand directly translate the value of the finished products to the value of milk and its components. Therefore, they have a sound economic underpinning.

Product price formulas can require increased data collection, particularly if industry insists that data used in the formulas be audited.

The predictability of prices computed from product price formulas should be reasonably good, or at least no worse than predictability of the underlying commodity prices. Short run predictability may improve since all information needed to compute prices is reported on an ongoing basis. This contrasts with the present BFP computation in which the base month Minnesota-Wisconsin price is not reported until the actual basic formula price is announced.

Product price formulas are transparent, since the information to compute the price is available, and the effect of a change in commodity prices or one of the other factors may be observed and quantified.

This final rule replaces the current BFP with a multiple component pricing (MCP) system which will determine butterfat, protein, and other solids prices for milk used in Class III products and butterfat and nonfat solids prices for milk used in Class IV products.

Numerous comments were received, primarily before issuance of the proposed rule, concerning whether the revised orders should keep Class III–A (i.e. a four class market) or whether all hard manufactured products should be priced in Class III. The opposition to Class III–A centered around two issues: (1) The integrity of the classified pricing system, and (2) the perception that a butter/nonfat dry milk class would reduce producer pay prices. The supply/demand for butter and nonfat dry milk is sufficiently different from the supply/demand for cheese to justify separate classification and pricing. In addition, the decision to use the higher of the Class III or Class IV price for determining the Class I price, and base the Class II price on the Class IV price, should more accurately reflect the value of these different categories of use.

Changes in the cheese market have a major impact on the dairy industry. The cheese industry has evolved from cheese production being a means of surplus milk storage and removal to a competitive consumer demand-driven industry. More milk is used in cheese production nationally than is used in Class I. The nonfat dry milk industry is now one which balances surplus milk storage and removals. This category is also evolving, with increasing commercial uses for nonfat dry milk, and dry milk products formulated for specific needs. Increasing quantities of nonfat dry milk are being produced for use in other dairy products and the food and pharmaceutical industries.

The separation of manufacturing milk into two classes will assure that shifts in demand for any one manufactured product will not lower the prices for milk used in all other classifications, including Class I prices. Recent milk price increases have been attributed to increased cheese values. Many people expect that per capita cheese consumption will continue to grow. However, some warn of impending market saturation as more cheese plant capacity materializes and consumer tastes and preferences change. Cheese consumption patterns are based on many factors outside the dairy industry's control. Health concerns relating to changing demographics, changes in pizza consumption and income growth, as well as retail and wholesale inventory decisions, etc., will impact consumption and prices. A recent report by the Food and Agricultural Policy Research Institute noted that ''anything that results in demand weakness for cheese will likely result in a markedly different outlook for the entire dairy sector.'' The adopted pricing system will allow other manufactured products (i.e. Class IV) to move Class I prices, helping to reduce the volatility in milk prices.

Over the last six years cheese prices, and to a lesser extent butter prices, have shown considerable fluctuation while the nonfat dry milk price remained relatively stable. Price changes for these finished products are indicative of varying supply/demand situations over time. The stable nonfat dry milk prices and the butter prices prior to the fall of 1995 were a reflection of large stocks being carried in storage and flat demand. Prices for nonfat dry milk and butter became more volatile once government inventories were depleted and were no longer a factor in stabilizing prices. Butter prices increased during May and June of 1997 in response to demand for cream, while both cheese and nonfat dry milk prices remained relatively flat. These differences in price movements indicate separate supply and demand balances for different manufactured dairy products.

Research cited in the proposed rule supports the conclusion that the different supply and demand characteristics for the cheese and butter/nonfat dry milk market segments warrant separate classification and prices. This pricing plan will allow the market-clearing price level of each of these manufactured products to be achieved independent of the other products. As a result, dairy farmers will be paid a price which is more representative of the level at which the market values their milk in its different uses.

The importance of using minimum prices that are market-clearing for milk used to make cheese and butter/nonfat dry milk cannot be overstated. The prices for milk used in these products must reflect supply and demand, and must not exceed a level that would require handlers to pay more for milk

than needed to clear the market and make a profit.

The current BFP serves two functions: (1) A fixed differential is added to the current BFP to establish the Class I and Class II prices for the second succeeding month; and (2) the current BFP serves as the Class III price. In some Federal milk orders, a seasonal adjuster is added to the BFP to determine the Class III price. The BFP replacement will function in a similar fashion, using component prices. Class IV (butter and dry milk products) will be priced on a butterfat and nonfat solids basis. Class III (hard cheese) will be priced on a butterfat, protein, and other solids basis. The price of butterfat will be the same in Class III and Class IV. Class II will use the same butterfat price as Class III and Class IV with an adjustment to reflect the addition of the Class II differential. Payments to producers under MCP will be based on butterfat, protein, and other solids contained in the producers' milk, in addition to the producer price differential. Most Federal milk orders with MCP will also contain an adjustment to producer pay prices for the somatic cell counts of producers' milk.

The producer price differential reflects the collective value of participation in the marketwide pool. Primarily, it represents the producer's pro rata share of the additional value of Class I and Class II use in the market. The butterfat, protein, and other solids prices are component prices based on the value of the use of milk in manufacturing.

The Class I price will consist of a Class I butterfat price and a Class I skim milk price. As modified from the proposed rule, the Class I butterfat price will be determined by adding a fixed Class I differential divided by 100 to an advanced butterfat price computed using product prices for the most recent two-week period for which prices are available on the 23rd day of the month and will apply to the following month. The Class I skim milk price will be determined by adding the fixed Class I differential for each order to the higher of an advanced Class III or IV skim milk price, calculated by using product prices for the same two-week period. The calculation of Class I prices will be the same for both MCP and non-MCP markets.

Announcement of Class I butterfat and skim milk prices in advance eliminates current problems caused by calculating the butterfat differential after the month for which it is effective. Handlers will have true advance Class I pricing. There will be three different butterfat prices each month (Class I, Class II, and other classes) but no butterfat differential. The separate Class I butterfat price should present no administrative or verification problems since Class I butterfat testing and reporting currently exists.

The prices for butterfat, protein, and other solids used in Class III will be computed as follows:

Butterfat price = ((NASS AA Butter survey price—0.114)/0.82)

Protein price = ((NASS cheese survey price—0.1702) × 1.405) + ((((NASS cheese survey price—0.1702) × 1.582)—butterfat price) × 1.28)

Other solids price = ((NASS dry whey survey price—.137)/0.968).

For milk used in Class IV products the butterfat price is the same as the Class III butterfat price, while the nonfat solids price will be computed as follows:

Nonfat solids price = ((NASS nonfat dry milk survey price—0.137)/1.02).

This system of pricing best fits the three established goals and criteria, discussed previously, for a replacement to the BFP.

The first goal, that a replacement for the basic formula price meet the supply/demand criteria set forth in the Act, may be the most difficult to evaluate definitively since the Act specifically mentions minimum prices to producers. The BFP, as part of a classified pricing system, does contribute to minimum prices to producers. However, the basic formula price does not need to be set at a level to ''assure an adequate supply of wholesome milk'' since the BFP makes up only a portion of the minimum price paid to farmers. The minimum price to farmers is a weighted average of the value of all of the milk in the market place, of which the BFP is a part. The BFP replacement meets the supply and demand criteria for milk used in butter/nonfat dry milk and cheese even though the component prices are established from finished product commodity prices. The commodity prices are based on a competitive marketplace and reflect the supply and demand for those products (Class III and Class IV) that utilize approximately 50% of the Grade A milk supply.

The supply and demand for Grade A milk is not limited to one category of products. The same milk may be used for fluid or soft manufactured products as well as the Class III and Class IV products used to determine the BFP. As a result, the minimum prices established for Class III and Class IV reflect supply and demand for the milk used in all products.

In several comments received in response to the proposed rule, commenters expressed the view that the proposed product price formulas did not meet the requirements of the Act, and that an updated competitive pay price resembling the current BFP would be the appropriate replacement for the current BFP. For a price to be competitively established there must be a large number of willing buyers and sellers. The current base month price is established from a survey of pay prices for Grade B or manufacturing grade milk in Minnesota and Wisconsin. Whether prices paid for Grade B milk are representative of the value of Grade A milk is debatable. In addition, the volume of Grade B milk involved represents a declining production base from which to gather pay prices, and the number of plants buying manufacturing grade milk is continuing to decline, with many plants refusing to buy manufacturing grade milk even when they need milk and Grade A milk is more expensive. In other situations the manufacturing grade milk is procured because the seller of the milk is a member of the cooperative purchasing the milk and the cooperative will not deny market access to its member. Such a situation clearly is not competitive.

The Act stipulates that the price of feeds and the availability of feeds be taken into account in the determination of milk prices. This requirement currently is fulfilled by the BFP. If the price of feed increases the quantity of milk produced would be reduced due to lower profit margins. As the milk supply declines, plants buying manufacturing milk would pay a higher price to maintain an adequate supply of milk to meet their needs. As the resulting farm profit margins increase, so should the supply of milk. Likewise, the reverse would occur if the price of feed declines. The price of feed is not directly included in the determination of the price for milk, but rather causes a situation in which the price of milk may increase or decrease. A change in feed prices may not necessarily result in a change in milk prices. For instance, if the price of feed increases but the demand for cheese declines, the milk price may not increase since milk plants would need less milk and therefore would not bid the price up in response to lower milk supplies.

The pricing system contained in this decision will function in the same manner as the current pricing system by accounting for changes in feed costs and feed supplies indirectly. The product price formulas adopted in this rule should reflect accurately the market values of the products made from producer milk used in manufacturing. As feed costs increase with a resulting

decline in production, commodity prices would increase as a result of manufacturers attempting to secure enough milk to meet their needs. Such increases in commodity prices would mean higher prices for milk. The opposite would be true if feed costs were declining. Additionally, since Federal order prices are minimum prices, handlers may increase their pay prices in response to changing supply/demand conditions even when Federal order prices do not increase.

The second goal for a BFP replacement is that it should not deviate greatly from the price level of the current BFP. In effect, prices established by the current BFP formula in the past were used as a benchmark to compare how well the product price formulas adopted in this decision tracked the supply and demand conditions exhibited by the BFP. Several comparisons of the basic formula price replacement were made to the current BFP to determine whether the price computation formulas result in a price level for milk used in manufactured products that is reasonably close to the current BFP. It must be recognized that after the initial implementation of the revised prices, supply and demand factors will interact to adjust the actual price level to reflect the market for milk used in manufactured dairy products.

Protein, butterfat, and other solids values were combined to compute a Class III hundredweight price using standard factors of 3.1 for protein and 5.9 for other solids contained in skim milk, and 3.5 for butterfat. The resulting price averaged $0.47 or 3.7 percent below the current BFP for the 60-month period of January 1994 through December 1998. The Class IV hundredweight price, computed from the butterfat price times 3.5 and the nonfat solids price using a standard factor of 9 for nonfat solids contained in skim milk, averaged $0.50 or 3.9 percent below the current BFP during the same period. The replacement Class III and Class IV prices were both highly correlated with the current basic formula price. The Class III price had a .981 correlation coefficient while the Class IV price had a .744 correlation coefficient.

The above comparisons are based on applying the component pricing formulas to commodity prices that were in effect during the period examined. Therefore, price level comparisons can only provide an indication of how the BFP replacement prices may have behaved. The current BFP has been responding to changing market conditions, while the replacement formulas are applied to historic data which has exhibited changes over time in response to existing price levels, rather than marketing conditions that would have occurred under the BFP replacement. Additionally, the current BFP may have a greater tendency to reflect supply and demand conditions in Minnesota and Wisconsin rather than national supply/demand conditions. The formulas in this decision use national commodity price series, thereby reflecting the national supply and demand for dairy products and the national demand for milk.

The basic formula price replacement also meets the third primary goal. The formulas have the ability to respond to supply/demand changes. The Class III and Class IV prices should respond appropriately since the formulas use NASS-surveyed commodity prices that reflect national supply and demand for these commodities.

Overall, the BFP replacement formulas (for Class III and Class IV) meet the established criteria necessary for a BFP replacement. The formulas are relatively simple to use and can be applied uniformly. The formulas are transparent and the Class III and Class IV formulas meet the sound economics criterion.

In the near term, the use of NASS survey prices may reduce the ability to predict Federal order class prices since there is a limited history of using NASS survey prices. Predictability should improve over time as the relationship between the survey prices and easily-tracked exchange prices becomes apparent to industry observers.

The formulas used in the basic formula price replacement likely will result in prices that are less stable than the current BFP. Unlike the current BFP, in which commodity updates are used to adjust the producer pay price survey, changes in product prices will be the sole determinants of changes in component prices. Past observation of competitive pay prices and commodity prices indicates that generally competitive pay prices do not move as quickly as commodity prices. Since the current BFP is based primarily on the base month survey price, the commodity-driven price series adopted in this rule will react more quickly to changes in the commodity markets than the current BFP reacts.

Make Allowances

Use of an economic engineering approach to determine appropriate make allowances was investigated. Neither the time nor the resources are available to construct models for determining appropriate make allowances at this time. As an alternative, various sources were used to determine appropriate make allowances for the basic formula price replacement. Research by Stephenson and Novakovic of Cornell University indicates that results obtained by using an economic engineering approach can be comparable to a survey of plants. Resources may need to be devoted to developing an economic engineering model, a survey, or a combination of the two.

The make allowances contained in the proposed rule were developed primarily from make allowance studies conducted at and published by Cornell University and an analysis of manufacturing plant size in relationship to the data contained in the Cornell studies. Audited cost of production data published by the California Department of Food and Agriculture was also used in determining a reasonable level of make allowances.

The proposed rule make allowances used in computing the component prices for Class III and Class IV resulted in per hundredweight prices which did not deviate greatly on average from the current BFP over the period analyzed, one of the criteria for a basic formula price replacement. During the September 1991 through May 1997 period on which the analysis in the proposed rule was based, the proposed Class III price level would have averaged $0.26 per hundredweight above the current BFP, with Class IV prices averaging $0.22 per hundredweight below.

Nearly all comments received relating to make allowances asserted that the proposed rule allowances were understated. Both handler and producer interests argued that failure to cover processors' costs of converting milk to finished products results in a disincentive to produce finished dairy products. They expressed concern that the disincentive would discourage investment in the manufacturing sector, leading to reduced manufacturing capacity and reduced outlets for producers' milk. A few commenters stated that make allowances should cover the costs of only the most efficient processors, and others objected to the inclusion of any make allowances, which they characterized as a charge against producers to pay processors for processing milk.

Producers objected to the inclusion of manufacturing allowances for milk processors while no allowance is made for producers to recognize any fixed recovery of the cost of producing milk. The current pricing system, using the BFP, also does not assure producers a fixed rate of return. However, because

the BFP is based on a competitive pay price of what manufacturers pay dairy farmers for milk, the manufacturers' make allowance has, in effect, been deducted from prices received from the sale of manufactured products before the pay prices are reported. Therefore the differences between the current pricing system using the BFP and the pricing system contained in this decision with respect to make allowances deals with the level and stability of make allowances rather than their existence.

National Milk Producers Federation (NMPF) supported use of a survey of dairy product manufacturing costs that has been conducted by the Rural Cooperative Business Service (RCBS), with some modifications, to establish Federal order make allowances. Many other comments supported the NMPF position. NMPF suggested adding a marketing cost allowance of $0.015 per pound of product to the manufacturing costs. NMPF explained that the addition of the marketing allowance was necessary since the NASS price data that will be used in the formulas includes the marketing costs covered by the $0.015.

The RCBS survey contains data for six cheese plants, six nonfat dry milk plants and five butter plants. In addition, the survey results include manufacturing data from three dry whey plants. The plants included in the survey represent a wide geographic representation of the United States. Given the limited number of plants involved in the study, however, regional information is unavailable. The survey results also represent a range of packaging types which can affect the final make allowance.

International Dairy Foods Association (IDFA) suggested that make allowances be determined by computing weighted averages of the results of the RCBS survey and the California audited make allowances. IDFA also included a $0.015 marketing cost adjustment as well as adjusting the RCBS make allowance to incorporate the same return on investment that is included in the California make allowance. IDFA and numerous other commenters explained that a return on investment is necessary for manufacturers to continue to invest in plants and equipment.

A number of comments were filed urging that make allowances be determined by auditing manufacturing plants in the same manner practiced by the State of California. Proponents explained that California has had long and successful experience with auditing make allowances and that a similar procedure could and should be implemented in Federal orders.

At this time the use of the RCBS study and the California data are deemed to be adequate for determining the initial make allowances contained in this decision. Several problems exist with auditing make allowances. First, the Federal milk order system currently is not equipped to handle the type of audits necessary for determining appropriate make allowances. An increase in market administrator administrative fees would be required to acquire and train auditors to conduct the make allowance audits, since these audits would have to be done in addition to the current audit program. Since most Class III and Class IV manufacturing is done in plants that currently are unregulated, authority to audit these plants to obtain make allowance data would need to be obtained. In addition, the industry may request a hearing on an expedited basis and present relevant data to justify changing make allowances. Therefore, there is no current plan to begin auditing manufacturing plants for the purpose of obtaining make allowance data.

The level of the make allowances included in this decision is based on input by all sectors of the dairy industry. If the make allowances are established at too low a level, manufacturers will fail to invest in plants and equipment, and reduced production capacity will result. If the make allowances are established at too high a level there will be unwarranted incentive to increase capacity above the needs of the industry, leading to overcapacity and resulting losses to manufacturers. Either scenario would not be in the best interest of the dairy industry. Manufacturing plant operators who find the level of make allowances inadequate compared to their actual costs also have the alternative to not participate in a Federal order marketwide pool.

Most commenters agreed with NMPF and IDFA that the make allowances proposed to be used for the butterfat and nonfat solids prices were too low, and the resulting prices too high. NMPF suggested that a make allowance of $.1327 per pound of butter (plus the $.0015 marketing cost, or $.1342) would be appropriate for use in the butterfat price calculation, and IDFA favored a make allowance of $.114, compared to the proposed make allowance of $.079. Several commenters suggested use of California make allowances.

The formula for determining the butterfat price for butterfat used in Class III and Class IV products will be computed using the following formula:

Butterfat price = ((NASS AA Butter survey price − 0.114)/82).

The make allowance of $0.114 per pound of butter is determined by adding to the RCBS survey make allowance a marketing cost of $0.015 and a return on investment of $.0068, which is the same return on investment included with the California butter processing cost. The RCBS make allowance included packaging costs for print butter; therefore, $0.0175 was deducted from the make allowance to adjust for the difference between print and bulk butter packaging. The California butter processing cost was also adjusted by the $0.015 marketing cost. A weighted average make allowance was then computed using the adjusted RCBS make allowance and pounds of butter contained in the RCBS survey and the adjusted California butter processing cost and the pounds of butter represented by the California butter plant audit. The resulting make allowance of $0.114 is $0.035 greater than the $0.079 make allowance contained in the proposed rule. An increase in the butter price formula make allowance will allow plants to recover a larger percentage of the costs of producing butter than under the proposed rule.

Comments on the computation of a nonfat solids price included suggestions by NMPF that the nonfat dry milk make allowance level should be $.1245 plus the $.0015 marketing cost, or $.126, and by IDFA that $.137 would be an appropriate level, compared to the $.125 used in the proposed rule. Several other commenters favored the California make allowance, suggesting something in the $.135–$.14 per pound range for nonfat dry milk.

The formula for computing the nonfat solids prices for milk used in Class IV will be as follows:

Nonfat solids price = ((NASS nonfat dry milk survey price − 0.137)/1.02).

As in the case of computing the butterfat make allowance, the nonfat solids make allowance is a weighted average of the RCBS survey and the California processing costs. A marketing cost of $0.015 and a return on investment of $0.0159 was added to the RCBS survey while the $0.015 marketing cost was added to the California price. The resulting make allowance of $0.137 per pound of nonfat dry milk is $0.012 more than the proposed rule make allowance of $0.125. The resulting increase in the make allowance will allow plants to recover a larger percentage of the cost of

producing nonfat dry milk than they would have using the make allowance included in the proposed rule.

In addition to revising the make allowance for computing the nonfat solids price, the yield factor is also adjusted. In the proposed rule a yield factor of .96 was used in the nonfat solids formula. The .96 was intended to represent the 96 pounds of solids in 100 pounds of nonfat dry milk. Most parties, including IDFA and NMPF, commented that the .96 was inappropriate and that a factor of 1.02 was more appropriate. Since buttermilk powder is also a product of manufacturing butter and nonfat dry milk, its value needs to be addressed. Because the proposed rule did not account for the yield of buttermilk, the .96 factor was appropriate. However, failing to account for buttermilk powder resulted in overstating the nonfat solids price since the pounds of nonfat solids were understated. Use of the 1.02 factor allows the nonfat solids contained in nonfat dry milk and buttermilk powder to be accounted for, and the value of all nonfat solids to be accurately reflected in the nonfat solids price.

The results of the revisions made to the butterfat and nonfat solids formulas yield a Class IV hundredweight price that would have averaged four cents below the current Class III–A price and fourteen cents above the California 4a price over the period of January 1994 through December 1998. These results address the major concern of many of the comments that the Class IV prices in the proposed rule were too far out of alignment with California 4a prices for Federal order plants to be competitive. The more important criteria of reflecting supply and demand is also met by the revised formulas. Research by Knutson, Anderson, Awokuse, and Siebert showed that the formulas contained in the proposed rule outperformed the current basic formula price in reflecting supply and demand. Under the revised formulas the level of prices will be changed, but not their relationship to supply and demand.

Nearly all comments on the cheese make allowance proposed for use in computation of the protein price described the proposed $ .127 make allowance as too low, resulting in a too-high protein price. NMPF supported use of the RCBS survey results ($ .1421), which were somewhat higher than the proposal. IDFA supported using an average of the RCBS survey and California make allowances, which generally are higher still ($ .152). A number of other commenters argued that the proposed cheese make allowance would cover the cost of making none of the cheese made in California. The Dairy Institute of California advocated make allowances of at least $.17 for blocks and $.14 for barrels.

Many commenters insisted that barrel cheddar cheese prices should be included in a weighted average with block cheddar prices since much more barrel cheese is produced than block cheese. NMPF urged that the barrel price not be included because barrels don't have uniform composition, and because the use of such prices would have the effect of unnecessarily reducing prices to producers. Other commenters suggested that if barrel prices are included, they should be increased by 3 cents per pound to make up for the difference in packaging costs. Still other commenters argued that all varieties of cheese should be included in the NASS price survey to assure that all cheese value is captured.

The formula for computing the protein price for milk used in Class III is as follows:

Protein price = ((NASS cheese survey price − 0.1702) × 1.405) + ((((NASS cheese survey price − 0.1702) × 1.582) − butterfat price) × 1.28)

The NASS cheese survey price will be determined by adding three cents to the moisture-adjusted barrel price and then computing a weighted average price using the block cheese price and the adjusted barrel price times the pounds of each cheese type in the NASS survey and dividing by the total pounds of block and barrel cheese in the NASS survey. Including both block and barrel cheese in the price computation increases the sample size by about 150 percent, giving a better representation of the cheese market. Since the make allowance of $0.1702 is for block cheese, the barrel cheese price must be adjusted to account for the difference in cost for making block versus barrel cheese. The three cents that is added to the barrel cheese price is generally considered to be the industry standard cost difference between processing barrel cheese and processing block cheese.

The make allowance used in computing the protein price, $0.1702, was established by computing a weighted average make allowance using the RCBS survey and the California processing costs. The RCBS survey was adjusted by adding a marketing cost of $0.015 and a return on investment of $0.0104 for a total of $0.1540 while the California processing costs were increased by a marketing cost of $0.015 for a total of $0.1855. The weighted average was then computed by multiplying the pounds of cheese represented in each study by the respective prices. The resulting total was divided by the total pounds of cheese represented by the studies.

The factors used in the formulas for computing component prices are determined by the quantity of the component in the commodity, except for protein, for which the Van Slyke yield formula is used. In the protein formula, the 1.405 and 1.582 are yield factors derived from the Van Slyke cheese yield formula. Both the 1.405 and 1.582 factors are determined by calculating the change in cheese yield if an additional tenth of a pound of protein or butterfat is contained in the milk, holding everything else constant.

The proposed rule used a 1.32 factor times the cheese price for use in computing the protein price. The change to a factor of 1.405 reflects the use of true protein as the basis for payments for protein rather than using a measurement of ''total nitrogen'' for the protein content of milk. The resulting protein price will be for a pound of ''true protein.''

Total nitrogen protein content and true protein content both result from chemical (Kjeldahl) testing methods approved for determining the protein content of dairy products by the Association of Official Analytical Chemists. When expressing protein based on total nitrogen, the protein percentage is over-stated by the amount of non-protein nitrogen (which has little or no effect on dairy product yields) present in the milk. Therefore, when milk is priced on the basis of its true protein content rather than its content of protein measured by total nitrogen, the price per pound of protein should be higher.

Currently, nearly all testing of milk for payment purposes is performed using infrared electronic testing equipment. At the wave-length filter at which protein is measured, only true protein is detectable. To calibrate for total nitrogen a bias factor has to be used to compensate for the non-protein nitrogen. It is also likely that the level of non-protein nitrogen will vary in every set of calibration samples, creating more problems in accurately calibrating electronic infrared instruments. Calibration for the true protein content of milk is more accurate than the calibration for total nitrogen protein. Because the accuracy of testing for true protein is higher than for total nitrogen protein, which has relatively little value, Federal milk orders should price milk on the basis of its true protein content rather than its total nitrogen protein content.

Comments on the proposed rule included discussion of the proposal to incorporate the difference in butterfat value between cheese and butter within the protein price. NMPF suggested that the .90 factor that results in a 1.582 multiplier should, instead, be .91 and result in a 1.60 multiplier because that factor more closely reflects the current retention of butterfat in cheddar cheese manufacturing. The IDFA comment argued that using the 1.60 multiplier would increase an already-high protein price. Another comment urged that the Grade A butter price be used instead of the AA price, because the value of butterfat in cheese shouldn't be increased over its value in butter. Further, the comment argued that the additional value of butterfat in cheese is added by the cheesemakers, and shouldn't be used to increase prices to producers.

Since Class III includes other types of cheese, such as mozzarella that has a lower fat retention than cheddar cheese, increasing the value attributed to that retention is not appropriate. Increasing the protein price for all milk used in Class III based on only a portion of the products included in Class III would put the other Class III products at a competitive disadvantage. Calculation of a minimum price will enable handlers to adjust prices paid to producers to account for additional value above the minimum Federal order prices. Therefore, the 1.582 factor will be used in the protein price formula contained in this decision.

Since Class III and Class IV use the same butterfat price, accounting for the difference in value of butterfat in cheese versus the value of butterfat in butter is necessary. This difference in value is included with the protein price calculation as a means of quantifying the amount by which the value of butterfat in cheese varies from the value of butterfat in butter. Attributing the additional value to protein is possible because it is the casein in protein that forms the molecular matrix that retains the butterfat in cheese. Without enough protein in milk to retain the butterfat in cheese, the butterfat would have a lower value in whey butter in most months. The ratio of butterfat to protein, 1:1.28, is calculated from the protein and butterfat yield factors of 1.405 and 1.582.

An alternative to incorporating the butterfat value in cheese with the protein price is to compute a separate butterfat price for Class III. This would be a relatively simple formula to compute. However, having multiple butterfat prices would require full plant accountability of components in all manufacturing plants. The resulting increased accounting, reporting, and administrative costs were determined to not be warranted when viewed against the small gain from having an additional butterfat price.

Use of the protein price formula adopted in this decision will increase the protein price by approximately 15 cents per pound when compared with calculating the protein price on the basis of total nitrogen protein. However, the increase is almost entirely negated by the lower content of true protein than of total nitrogen protein in milk. On a hundredweight basis, the change to true protein results in an increase to the Class III price of an average of 2 cents when compared to the formula using total nitrogen protein.

Use of true protein instead of total nitrogen protein for determining payments to producers should have a minimal impact on producer revenues. Producers with relatively high levels of non-protein nitrogen in their milk could see a slight drop in their revenue derived from the protein content of their milk.

In addition to changing the coefficients in the protein price formula to adjust for the use of true protein, the fixed protein and other solids values used in computing a per hundredweight Class III price must be adjusted. Accordingly, the Class III price will be computed by multiplying the butterfat price by 3.5 and adding the result of multiplying .965 times the sum of 3.1 times the protein price and 5.9 times the other solids price.

In comments filed in response to the proposed rule, NMPF suggested a $.1575 whey make allowance plus the $.0015 marketing cost, for $.1590, rather than the $.10 proposed. IDFA argued that a $.171 make allowance would be more appropriate. Wisconsin Cheesemakers indicated that the Class III price should not include a value for whey, as it frequently represents a cost to manufacturers. The Dairy Institute of California agreed that a whey factor should not be included, but that if it is, the yield factor (divisor) should be .98 (instead of .968).

The formula used for computing the other solids price is:

Other solids price = ((NASS dry whey survey price − .137)/0.968).

The determination of the $0.137 make allowances was based on several factors. Whereas the other make allowances were based on a weighted average of the RCBS study and California make allowances, the other solids make allowance is based primarily on the Cornell study of dry whey and whey protein concentrate make allowances. The Cornell study was used since California does not audit dry whey manufacturing costs and the RCBS survey has very limited data on dry whey manufacturing costs. The data on dry whey in the RCBS study expresses the costs on a per pound of cheese basis rather than on a per pound of dry whey basis. The $0.137 figure is slightly above the average cost of the model plants in the Cornell study and the same as was used for nonfat solids.

A value for other solids is included in Class III to assure that the Class III price reflects most of the value of milk used in Class III products. In the Federal milk orders currently pricing three components, the other solids price is determined by subtracting the value of butterfat and protein from the BFP. In this final rule the other solids price is established independently of the butterfat and protein price. Even though there is not a market for other solids as such, the dry whey price was determined to be the best indicator of value for other solids and provides a method of accounting for and distributing the value in Class III milk that is not accounted for in the protein and butterfat components. Other potential price series that could be used to determine the value of other solids were whey protein concentrate and lactose. Under present market conditions, dry whey offers more market activity with less specialization than either whey protein concentrate or lactose, and therefore constitutes a better price series for determining a minimum Federal order price. Comments filed by several parties supported the use of dry whey for the determination of the other solids price. The 0.968 factor in the formula represents the pounds of solids contained in a pound of dry whey.

Since the make allowances are applied on a component basis rather than on a hundredweight of milk basis comparisons to traditional make allowances may be difficult. Also, a make allowance that may seem reasonable when applied to a component may be seen as inappropriate when combined with the other components in the finished product. To evaluate the make allowances on a per hundredweight basis the Class III and Class IV milk prices were compared to the value of cheese and butter/powder using the CCC yield factors. These results were compared to the same calculation using the current BFP and the CCC yield factors. A comparison over time between the current level of class prices paid for producer milk and the value of

the manufactured products made from that price class of milk shows a reasonably stable difference between the two levels. This difference is the implied make allowance.

The implied make allowance for butter/powder using the current BFP for the period January 1994 through July 1998 was $0.83 per hundredweight, while the implied make allowance for butter/powder versus the Class III–A price was $1.37 per hundredweight. The implied make allowance calculated for the Class IV price, based on historical prices, would have been $1.41 per hundredweight. With the implied make allowance for the Class IV price being only $0.04 from the actual implied Class III–A make allowance, the butter make allowance and the nonfat dry milk make allowance, in combination, appear to approximate the current implied make allowance.

Determination of the make allowance for Class III is more difficult than for Class IV, in which butterfat and skim solids make two unique finished products. In cheese manufacture, most of the butterfat remains in the cheese with most of the protein, and a portion of the protein, butterfat and remaining nonfat solids are contained in the whey, which can be made into various products. The combination of the butterfat, protein, and other solids make allowances resulted in an implied make allowance of $2.72 for Class III (cheese) compared to the implied make allowance of $2.21 for the current BFP. Even though the implied make allowance using the Class III formulas in this decision is greater than the current implied make allowance it is appropriate since the CCC formula is basically a cheddar cheese yield formula whereas Class III contains multiple varieties of cheese and certain other products. A slightly larger make allowance in Class III will not place makers of products that have significantly different cost structures than cheddar cheese at a competitive disadvantage when participating in Federal orders relative to handlers who do not participate in the Federal orders.

Changes in make allowances will affect component prices and per hundredweight milk values. A one-cent per pound change in the butter make allowance will affect the butterfat price in the opposite direction by $0.0122 per pound. This would be $0.0427 per hundredweight for milk at 3.5 percent butterfat. The butterfat price also is used in the computation of the protein price. The protein price will change inversely to the butter make allowance by $0.0146 per pound or $0.046 per hundredweight for milk with 3.15 percent protein. A positive make allowance change for nonfat dry milk will result in a decline in the nonfat solids price. A one-cent change in the nonfat dry milk make allowance will result in a $0.0098 per pound or $0.0882 per hundredweight opposite change in the nonfat solids price. A one-cent change in the protein make allowance will cause an opposite change in the protein price by $0.0322 per pound or $0.1014 per hundredweight for milk with 3.15 percent protein. Finally, a one-cent change in the other solids (dry whey) make allowance will change the other solids price by $0.0103 per pound or $0.0567 per hundredweight in the opposite direction.

This pricing system eliminates the need for regional yields based on regional differences in milk composition. The value of milk will be adjusted automatically based on the level of components contained in the milk in each order even though the component prices are the same nationally. This automatic adjustment means that handlers will pay the same price per pound of component but may have differing per hundredweight values based on the milk component levels, creating equity in the minimum cost of milk used for manufacturing purposes.

Several comments were received suggesting that regional BFP replacement prices be used rather than a national BFP replacement. The commenters explained that cheese, butter, and nonfat dry milk have different values in different regions of the country, and that the Cornell study described a price surface for milk used in manufactured products across the United States. Therefore, they concluded, the replacement BFP also should be determined regionally.

This decision replaces the current BFP with a national Class III price and a national Class IV price. Although there may be some justification for regional pricing, there are two principal reasons for using national pricing. First, pricing milk on the basis of the pounds of components contained in the milk eliminates some of the regional differences in milk prices. Second, regional commodity price data, and for that matter regional competitive pay price data, are unavailable. Resulting attempts to estimate regional differences, with the ensuing regional differences of opinion, would yield minimal benefits.

An analysis of the basic formula price replacement requires several assumptions. Historical commodity price surveys are not available for all of the commodities. Prices used as substitutes for historical price survey data in this analysis include a cheese price computed by comparing the current NASS cheese price series to the comparable NCE/CME price series for the purpose of determining a historical protein price. The NCE/CME series was then adjusted by means of a regression analysis to reflect the differences between the NASS prices and the exchanges. The resulting price series simulates the use of the NASS series for the time period studied. For the butter price, the data from the ''BFP Committee Commodity Price Study'' was compared to the CME Grade AA cash butter price series. The CME Grade AA price series was then adjusted accordingly to make it more comparable with the Committee Price Study. Available survey prices used were nonfat dry milk prices and dry whey prices, both of which are published monthly by NASS in ''Dairy Products''. While a nonfat dry milk price and dry whey price are published in ''Dairy Products'' at the beginning of each month for the second previous month, the new weekly NASS survey discussed earlier is necessary to determine prices on a more current basis.

One of the initial requirements of a basic formula price replacement, based on the assumption that the national supply and demand for manufacturing milk as reflected in the current BFP is in relatively good balance, is that the price level not deviate greatly from the current basic formula price. The examples contained in the proposed rule resulted in the Class III portion of the BFP replacement averaging $0.45 per hundredweight above the current Class III price, and the Class IV portion of the BFP replacement averaging $0.13 per hundredweight above the current Class III price, both for the 48-month period January 1994 through December 1997.

In addition to comparing the Class III and Class IV price series to the current BFP, the Class III price was also compared to the California 4b price, while the Class IV price was compared to the Class III–A price and to the California 4a price. Comparisons to the California prices are included because many commenters expressed the view that the proposed rule resulted in prices that put plants regulated by Federal orders at a competitive disadvantage to California plants and that alignment with California pricing was essential. Most commenters did not express the view that Federal order prices should equal California prices, but that Federal order prices should be in alignment, i.e. ''reasonably close''. For comparison purposes all prices are expressed on a

per hundredweight basis with 3.5 percent butterfat. The Class III price was determined by using 3.1 pounds of protein and 5.9 pounds of other solids in 100 pounds of skim milk. To compute a 3.5 percent hundredweight price the skim milk value was multiplied by .965 and added to the butterfat price that was multiplied by 3.5. The same procedure was used for the Class IV price, with 9 pounds of nonfat solids in a hundred pounds of skim milk.

For the period January 1994 through December 1998, the Class III price averaged $0.47 below the current BFP and $0.20 above the California 4b price, while the Class IV price averaged $0.50 cents below the current BFP, $.04 cents below the current Class III–A price, and $0.15 above the California 4a price.

In addition to comparing the value differences between the Class III and Class IV prices and the current BFP, it is important to compare the relationship in price movements between the Class III and Class IV prices and the current basic formula price. Correlation coefficients were computed to statistically test the relationships between the Class III and Class IV prices, the current basic formula price, and the California prices. The correlation coefficient between the Class III price and the current basic formula price is above .98 while the correlation coefficient between the Class IV price and the current basic formula price is approximately .74. The correlation between the Class IV price and the current Class III–A price is .99. The correlations between the Class III and Class IV prices and California prices are also quite high, with the Class III price and the California 4b price having a correlation coefficient of .97 while the Class IV price and the California 4a price show a correlation coefficient of .99. These relationships are expected since the current basic formula price is weighted more heavily on milk used for the manufacture of cheese than on the value of milk used in the manufacture of butter and nonfat dry milk.

The Class III and Class IV formulas are computed from product prices representing the use of milk in each class. That is, the Class III price is derived from the value of cheese while the Class IV price is derived from the value of butter and nonfat dry milk. Therefore the Class III and Class IV prices can be expected to vary significantly from the current BFP in individual months, reflecting the economic (supply and demand) conditions for cheese, butter, and nonfat dry milk. This situation is particularly true of the Class IV price. For example, during 1993 and 1994 the price of butter and nonfat dry milk was relatively low and stable compared to the price of cheese. The degree of variability of individual months' prices from the average for the year is expressed by a standard deviation. A lower standard deviation indicates that individual observations (in this case, monthly product prices) vary less from the mean than would be indicated by higher standard deviations. These statistical descriptions indicate the difference in variability of prices between butter/powder and cheese in 1993 and 1994.

During 1994 the Class IV price would have averaged $10.26 with a standard deviation of $0.11, compared to the 1994 BFP average of $12.00 with a standard deviation of $0.57, and the average Class III price of $11.47 with a standard deviation of $0.69. For 1998, when the economic conditions for butter and nonfat dry milk had changed and prices became more volatile, the Class IV price would have averaged $14.79 with a standard deviation of $2.13 versus the 1998 BFP average of $14.20 with a standard deviation of $1.97, and the Class III average price calculation of $13.84 with a standard deviation of $2.14.

The Class III and Class IV prices clearly reflect the value of the milk used in the respective manufactured products, whereas the current basic formula price reflects primarily the value of milk used to manufacture cheese in a particular region of the U.S. (Minnesota and Wisconsin).

Class I

As in the proposed rule and currently, the basic formula price replacement will act as a mover for the Class I price in addition to establishing prices for milk used in Class III and Class IV. Also as proposed, the Class I value will be separated into two parts: skim milk and butterfat. However, instead of the proposed six-month declining average of the higher of each month's Class III and Class IV skim and butterfat prices, the Class I price mover will be determined by the most recent manufacturing product prices available. The advanced price aspect of the Class I price mover will also be shortened from the current and proposed timing of the Class I price announcement. Both the Class I skim and butterfat components will be announced on the 23rd day of the preceding month using advance pricing factors based on product prices for the most recent two weeks. The Class II skim milk price will be announced similarly. This change from the proposed rule is being made to respond to numerous handler comments on the proposed rule and to address class price inversion that occurred during the second half of 1998.

Comments relating to replacement of the BFP as a Class I price mover that were filed before issuance of the proposed rule ranged from favoring continuation of the current system to establishment of the Class I price independently of the basic formula price(s) for milk used in manufactured products. One comment suggested eliminating the basic formula price and pooling only the Class I and Class II differentials. These comments were fully considered in the proposed rule.

Numerous comments received in response to the proposed rule favored advance pricing of Class I skim and butterfat separately. However, a number of commenters expressed concern that use of the higher of the Class III or Class IV prices in the calculation of the Class I price mover would result in undue enhancement of Class I prices. The most controversial aspect of the Class I price mover proposal was the use of a 6-month declining average. Many of the comments received concerning the Class I mover expressed the view that the Class I price must be closely and directly linked to the manufacturing price in the same manner that occurs currently. Commenters expressed the view that the current system, two-month advance pricing, closely links the manufacturing value of milk to Class I and therefore gives appropriate price signals to producers. They opposed the six-month declining average on the basis that the delay in linkage with the Class I price would be too long and that Class I pricing would be counter cyclical. Some who opposed the time lag built into the 6-month declining average suggested that a 3-month average would do as well at attaining some stability without as much ''de-linking.''

Several commenters opposed building less volatility into Class I prices than into manufacturing class prices. Among the reasons given were that added stability for Class I would mean greater volatility in prices for manufactured products, and that added stability would favor producers in high Class I markets.

Other comments on the proposed rule supported variations of a 12-month rolling average Class I price mover, some with seasonal adjustments. A number of comments favored the stability of the longer-term basis for Class I prices. One graph submitted shows a very close relationship between the 6-month declining average mover and the current BFP.

There are several conflicting issues that must be balanced when establishing the Class I price mover. First, the retail demand for Class I milk is independent of the demand for manufactured dairy products. Second, the raw material used in both Class I products and manufactured dairy products is the same and therefore the separate uses must compete for the given supply of milk. Third, the elasticity of demand for the various dairy products is significantly different, creating different consumer responses to the changing prices for various dairy products. The Federal milk orders have attempted to address these issues through classified pricing. This system allows a higher price to be applied to milk used for Class I uses due to inelastic demand for Class I products. This higher price also allows Class I uses of milk to compete for the raw milk supply against manufactured dairy products. At the same time, marketers of Class I products support some degree of forward pricing, requiring processors of Class I products to know the Class I price in advance.

Most of those commenting on the proposed rule and the Department perceive the need to reflect changes in the prices for milk used in manufactured products in the price of milk used in fluid products. Since Class I handlers must compete with manufacturing plants for a supply of milk, the Class I price must be related to the price of milk used for manufacturing.

It is apparent from the price patterns of a large part of 1998 that the current two-month lag between manufacturing and fluid pricing does not establish as close a relationship between the two price levels as is desirable. Indeed, from an analysis of the differences between prices generated by a six-month declining average and the current pricing system, it is clear that the current two-month lag does not accomplish any closer relationship between manufacturing and fluid prices than would the six-month declining average.

When manufactured dairy product prices are relatively stable the advance pricing of Class I milk works quite well. However, since 1988 the volatility in the manufactured dairy product market has caused problems with the advance pricing of Class I milk. The first problem is readily evident in class price relationships during the latter part of 1998. The frequent occurrence of price inversions during that period indicates that some alteration to both the proposed and current methods of computing and announcing Class I prices may be necessary. Class price inversion occurs when a markets's regulated price for milk used in manufacturing exceeds the Class I (fluid) milk price in a given month, and causes serious competitive inequities among dairy farmers and regulated handlers. Advanced pricing of Class I milk actually causes this situation when manufactured product prices are increasing rapidly.

Since the Class I price is announced in advance, in a rapidly changing market the Class I price may not reflect the value needed to compete for the necessary raw milk supply or the Class I price may be overvalued relative to the raw milk price. Undervaluing Class I milk is a particular problem since it reduces producers' pay prices at a time when the producers should be receiving a positive price signal. As an example, in July 1998 the Class I price in every Federal order market except one was below the Class III price. Although July is not a period of very high Class I demand, it is a time when Class I demand is starting to increase in some regions relative to total milk production. At this same time producers in these regions received lower pay prices. Many Federal milk orders also experienced a Class I price below the Class III price in August as a result of two-month advance pricing of Class I. Demand for Class I milk increases substantially in August. While producer prices rose in August, the increase would have been larger had Class I prices been based on more current Class III prices. Under these pricing relationships, the Class I handler may have a more difficult time acquiring milk as the minimum Federal order Class I price puts the handler at a disadvantage to handlers demanding milk for manufacturing purposes. Since Class I handlers must compete with manufacturing plants for a supply of milk, the Class I price must be related to the price of milk for manufacturing.

Another problem inherent in the current method of announcing Class I prices in advance is that the price for milk established in advance is for milk containing 3.5 percent butterfat. The current system does not determine the price of butterfat in advance, therefore the Class I handler does not know the value of milk at butterfat contents other than 3.5, until the butterfat differential is announced in the month following sale of the processed product. Under this final decision, Class I handlers will have advanced price information for both the skim and butterfat portions of the Class I price.

The purpose of the minimum Class I differential is to generate enough revenue to assure that the fluid market is adequately supplied. As a result of advance pricing, the effective Class I differential—that is, the actual difference between the Class I and manufacturing use prices in a month—is not the same as the Class I differential stated in an order. While the effective Class I differential varies monthly, it generally has remained positive. Recent increased volatility in the manufactured product markets has resulted in more instances in which the effective Class I differential has been negative, especially in markets with low minimum Class I differentials.

In the past when price inversions have occurred, the industry has contended with them by taking a loss on the milk that had to be pooled because of commitments to the Class I market, and by choosing not to pool large volumes of milk that normally would have been associated with Federal milk order pools. When the effective Class I differential is negative, it places fluid milk processors and dairy farmers or cooperatives who service the Class I market at a competitive disadvantage relative to those who service the manufacturing milk market.

Milk used in Class I in Federal order markets must be pooled, but milk for manufacturing is pooled voluntarily and will not be pooled if the returns from manufacturing exceed the blend price of the marketwide pool. Thus, an inequitable situation has developed where milk for manufacturing is pooled only when associating it with a marketwide pool increases returns.

Illustrative of the worsening class price inversion problem are the growing volumes of milk that, while normally associated with Federal milk orders, are not being pooled due to price inversion problems. When the Class II, III, and/or III–A prices are higher than a handler's blend price adjusted for location, it becomes disadvantageous for handlers processing soft and hard manufactured products to pool milk. That is, instead of drawing money out of the pool, they have to pay money into the pool. In 1995, the volume of milk not pooled due to class price inversion was 5.3 billion pounds. In 1997, nearly 7.8 billion pounds were not pooled for this reason. In 1998, 14.1 billion pounds were not pooled due to class price inversions. During each of five of the seven months of June through December 1998, the volume of milk not pooled exceeded 2 billion pounds. In July 1998, class price inversion occurred in all Federal order markets except Southeastern Florida, and in 19 markets some milk was not pooled due to class price inversion.

Since volatility in the manufactured product markets is expected to

continue, the Class I price mover developed as part of this Federal milk order reform process should address this disorderly marketing situation.

The advanced pricing procedure provided in this final decision results in a Class I price that is based on a more recent manufacturing use price, thus reducing (but not eliminating) the time lag that contributes to class price inversion. For example, the January 1999 Class I price for each market would be announced on December 23, 1998 and would be based on product prices reported on December 10 and 17. (The prices reported on these dates are for the weeks ending December 4 and 11.) Under the current procedure, the January Class I price was announced on December 3, 1998 and was based on product prices reported for weeks ending November 6, 13, 20, and 27.

While the advance pricing procedure in this decision reduces the time period of advance notice by about 18 days, the reduction in advance notice of Class I and II prices should not add significant risk or burden to handlers. The pricing formulas are based solely on product prices which are announced weekly; therefore, handlers can update formulas on a weekly basis to estimate what the Class I price will be before the price is announced. Also, as more NASS product price survey observations become available, basis differences from earlier traded/issued product price surveys such as those from the Chicago Mercantile Exchange or Dairy Market News will be more predictable and, therefore, should provide for more accurate predictions of future price levels. In addition, futures markets have been established for the four dairy products in the NASS price surveys. While trading to date in these contracts has not been large, interest in these markets may increase as the industry learns to use them as effective hedges to the component values determined under this final decision. These markets also will assist handlers in estimating the Class I price.

Using the current two-month advance pricing system, but substituting for the current BFP the higher of the Class III or IV prices as defined under this rule, markets with a Class I differential of $1.60 per hundredweight or less would have faced a price inversion in four of the last seven months of 1998. The range of the price inversion would have been $.21 to $1.49. In a fifth month, price inversion would have occurred at a Class I differential of $1.49 or lower. In September 1998, price inversion would have occurred in all Federal order markets except Florida. However, using the shortened advance period adopted in this decision, for markets with a Class I differential of $1.60 per cwt., price inversion would have occurred in only two of the last seven months of 1998. The range of the price inversion would have been $.02 to $.86. The shortened period of advance pricing reduces both the occurrences and level of price inversion.

To further illustrate that the advance pricing procedure in this final decision provides a Class I price level that is less likely to be below the manufacturing use price, the following analysis was done. Averages of the 1998 NASS product prices for the current month, the second preceding month, and the two-week period available on the 23rd of the preceding month were computed and compared. For all four products, the preceding month two-week average provided a better estimate of the current month average than did the average for the second preceding month. Looking at the Cheddar cheese price series, the two-week preceding month price was $.03 closer to the current month on a simple average basis, and $.04 closer on an absolute average basis. This means that using preceding month two-week average Cheddar cheese price would result in a Class III skim milk price that would be about $.40 per cwt. closer to the following month's Class III skim milk price than if the second preceding month's price is used.

As stated earlier, advance pricing affects the function of the minimum Class I differential. The advance pricing procedure in this decision reduces the difference between the manufacturing use price used to establish the Class I price and the manufacturing use price in the current month. This procedure will result in an effective Class I differential that would be closer to the Class I differential stated in each order. Thus, reducing the time lag of the Class I pricing advance improves the functionality of the minimum Class I differential.

Comments filed by some southern interests indicated that stability in pricing in the southeast U.S. should incorporate seasonal price incentive programs as a necessary part of adequately supplying the fluid markets of the southeast. According to the commenters, such a program would encourage balancing production with fluid milk demand. The comments state that because such a pricing plan would be revenue neutral, it would allow for more price stability and more reliable price signals than is currently available for producers in high Class I utilization areas.

Addition of seasonal adjustments for marketing areas would disrupt the uniformity in pricing between marketing areas that is a goal of this pricing plan. The seasonal patterns of milk production and consumption are not the same between regions, and it would be difficult, if not impossible, to attempt to work out seasonal pricing as a part of the BFP replacement.

As discussed previously, the price link between Class I use and Grade A milk used to manufacture Class III and Class IV products should be maintained since Grade A milk can be used for fluid uses as well as for manufacturing uses. Because handlers compete for the same milk for different uses, Class I prices should exceed Class III and Class IV prices to assure an adequate supply of milk for fluid use. Federal milk orders traditionally have viewed fluid use as having a higher value than manufacturing use. The replacement Class I price mover reflects this philosophy by using the higher of the Class III or Class IV price for computing the Class I price.

In some markets the use of a simple or even weighted average of the various manufacturing values may inhibit the ability of Class I handlers to procure milk supplies in competition with those plants that make the higher-valued of the manufactured products. Use of the higher of the Class III or Class IV price will make it more difficult to draw milk away from Class I uses for manufacturing. For example, if the Class IV price were used as the Class I price mover there would be months in which the Class III price would be more than two dollars above the Class IV price. As a result, the Class I differential would have to be well over two dollars for the Class I price to remain above the Class III price. If the Class III price is used as the Class I price mover, the reverse situation of having the Class IV price well above the Class III price would result in the same problem. The potential of having a Class III or IV price in excess of the Class I price is not entirely eliminated by using the higher of the Class III or Class IV price because of the advance Class I pricing feature. However, reducing the time period for which Class I pricing is advanced should reduce the potential considerably, allowing Class I handlers to compete more effectively with manufacturing plants for fluid milk.

Class II

Under this final decision, the value of Class II skim milk will be computed by multiplying the hundredweight of producer skim milk allocated to Class II by the sum of an advanced Class IV skim price, calculated from nonfat dry milk product prices reported by NASS

for the most recent two-week period for which prices are available on the 23rd day of the preceding month, and the 70-cent Class II differential. The price used for valuing Class II butterfat will be the current month's butterfat price determined from the NASS-reported butter price, as in Classes III and IV, plus .7 cents per pound to incorporate the Class II differential.

Generally, the source of inputs alternative to producer milk for the manufacture of Class II products is dry milk products and butterfat that otherwise would be used in butter. Basing the price of milk used to make Class II products on these alternative ingredients should help considerably to remedy a situation in which it is perceived that a separate product class for dry milk (Class III–A) has resulted in a competitive advantage over producer milk used to produce Class II products. The 70-cent differential between the Class IV and Class II skim milk prices is an estimate of the cost of drying condensed milk and re-wetting the solids to be used in Class II products. One commenter suggested that there should be a $1.00 difference between Class IV and Class II.

Comments filed in response to the proposed rule generally supported basing the Class II price on the Class IV price. However, many commenters, including operators of plants manufacturing food products, argued that the proposed $0.70 differential is too high. In many cases they stated that the cost for rehydration is substantially lower than $0.70, if the nonfat dry milk is rehydrated at all.

Only a small portion of the $0.70 differential is intended to represent the cost of rehydration. The majority of the $0.70, $0.57, represents the cost of drying condensed milk. Comments filed by Kraft, Inc., stated that the cost of using nonfat dry milk (NFDM) in Class II is 0–3 cents per pound. At a rate of 9 pounds of NFDM per hundredweight of skim milk, this cost could represent as much as 27 cents per hundredweight. When added to the 57-cent cost of drying condensed milk, the 70-cent differential appears to be justified. It should be noted that the cost to purchase or manufacture NFDM for use in Class II products would include not only the cost of milk at the Class IV price, but the cost of making NFDM (in excess of $1.20 per hundredweight of skim milk when the make allowance for a pound of NFDM is multiplied by the yield).

Many of the commenters suggested that a rate of $0.30 is appropriate since that is what is used currently in the Federal orders. The current Class II differential, $0.30, was established by a national hearing conducted in 1991. At that hearing proponents of a $0.30 Class II differential explained that the average difference between Class II prices and Class III prices over a recent time period had averaged $0.30. The $0.30 difference was not based on the actual cost differences between existing classes of milk.

The Class II price level determined under this final rule should not, on average, be higher than its predecessor. The concern of commenters that the level of the proposed Class II price would be excessive should be mitigated somewhat by the reduction in the level of the Class IV formula adopted in this rule. For the period January 1994 through December 1998, the Class II price as determined in this final rule averaged $0.01 higher than the current Class II price. There is a very large variation from year to year in the differences between the current and adopted Class II prices. In 1994, the current Class II price averaged $1.50 more than the Class II price calculated according to this decision. For 1998, however, with butter prices at record levels, the Class II price computed from butter and powder prices averaged $1.58 higher than the current Class II price. These price differences illustrate the result of pricing Class II milk on the basis of manufactured ingredients instead of on the basis of cheese.

Many of the comments received concerning the Class II price opposed the proposal to price Class II on a current basis rather than on an advance basis as is currently the case. The commenters argued that since Class II products are sold on an advance basis similar to Class I products the continuation of advance pricing of Class II is essential. Other commenters expressed the view that the skim portion of Class II could be forward priced but butterfat should be priced on a current basis since competing uses for butterfat such as cheese and butter would be priced on a current basis. Class II products high in butterfat, such as ice cream, could be placed at a competitive disadvantage in procuring butterfat if the current month's butterfat prices are substantially different than the advanced priced butterfat price.

The Class II price adopted under this rule will result in forward pricing the skim milk portion of Class II while pricing butterfat on a current basis. Butterfat used in Class II products competes on a current-month basis with butterfat for used in cheese and butter, and its price should be determined on the basis of the same month's values. Forward pricing of skim milk will, of course, eliminate some of the desired direct linkage between the nonfat solids price in Class II and the nonfat solids price in Class IV. However, especially with the shortened period of advanced pricing, in most cases the linkage should remain close enough so that the Class II differential does not encourage the drying of milk for Class II uses just to receive a price advantage. This alignment also should reduce perceived problems in the use of nonfat dry milk to make Class II products. Tying the Class II price to the Class IV price by this fixed differential, even with advanced pricing for Class II skim, should reduce the incentive to produce nonfat dry milk for use in Class II products.

Quality Adjustments

This final decision provides for the adjustment of producer payments for the somatic cell count of producers' milk under most orders using multiple component pricing. Payments made by handlers for milk used in Class II, Class III, and Class IV also will be adjusted on the basis of the somatic cell count of the milk.

A somatic cell count (SCC) adjustment is appropriate for several reasons. First, SCCs are not only an indicator of general milk quality, but also are an indicator of the potential yield of milk in cheese and other products that require casein for their structure and body. Research has shown a direct link between increased SCCs and decreased cheese yields.

Second, many producers currently are subject to some type of multiple component pricing plan or quality premium program that adjusts their pay prices for somatic cell levels even if the order in which their milk is pooled does not incorporate such adjustments. Although many producers' returns are affected by the SCC of the milk, there is little, if any, oversight of the testing for somatic cells if the order does not include pricing adjustments. Fair and accurate testing can be assured by incorporating multiple component pricing and somatic cell adjustments into Federal orders.

The somatic cell adjustment will apply on a hundredweight basis and be computed by subtracting the SCC (in thousands) from 350 and multiplying the result by the product of .0005 times the monthly average cheese price used to compute the protein price. This level of adjustment has worked well in orders currently containing somatic cell adjustments, and is supported by data and research contained in Federal milk order hearing records.

There was not a great deal of agreement on how to determine which orders should provide for SCC adjustments. Some commenters favored their inclusion in all markets and some favored a SCC adjustment on all milk priced under multiple component pricing. NMPF favored SCC adjustments for regions that want them. A Northeast producer group argued that the limited effect of SCCs on Class II and Class IV uses makes them unsuitable for use as an adjustment factor for milk in the Northeast. One fluid milk handler opposed their application to Class I use, while several others opposed excluding Class I milk from using somatic cell count as a cost component because such an adjustment could result in fluid handlers receiving lower-quality milk.

The application of somatic cell adjustments will be limited to orders providing for multiple component pricing, since the detrimental economic effect of somatic cells has been shown to occur principally with respect to the protein component of milk. SCCs unquestionably do have detrimental effects on the flavor and keeping quality of fluid milk products, and undoubtedly on other dairy products as well, but the economic quantification of those effects is not part of the information available for this decision. There are three order areas in which producer sentiment is opposed to the inclusion of SCC adjustments, and these adjustments are not adopted for the three orders. In the case of the Pacific Northwest and Western consolidated orders, most producers already are covered under very effective SCC payment programs, and the average SCC in these markets is less than 250,000 (below the neutral level for SCC value adjustments). There would seem to be little reason to require additional SCC programs for these orders. In addition, the Northeast order does not contain a SCC adjustment. Comments filed by Northeast interested persons argued that the predominant use of milk for manufacturing in that area is nonfat dry milk and butter, and that yields of these products are not affected by SCCs. A somatic cell value adjustment is not, therefore, included in the Northeast order.

As in the proposed rule, for the orders containing a somatic cell adjustment provision the adjustment will be applied to milk used in Classes II, III and IV for handler billings, and to all producer milk for payment to producers. This application of a SCC adjustment has worked well in the orders currently providing for it, and should result in no additional marketing, testing or accounting requirements in those orders. At least some portions of most of the consolidated orders for which the SCC adjustment is provided already contain such provisions.

Several comments suggested including a maximum count of 25,000 psychrotrophic bacteria as a criterion for payment of positive SCC adjustments. Even though there may be a valid reason for including psychrotrophic bacteria for payment purposes, bacteria counts will not be included with this decision. Somatic cell counts are the only quality adjustments in this final decision. The issue of whether to include psychrotropic bacteria as a payment criteria is better left to a Federal order hearing that specifically addresses the issue. In contrast to a somatic cell adjustment, which already is contained in many of the orders with multiple component pricing, none of the orders currently provide for adjustments for bacteria counts.

Application of the Replacement Basic Formula Price(s)

Under this final rule, producers in most Federal order markets will be paid on a multiple component basis since the basic formula price replacement is based on individual milk component prices. Producers will be paid for the pounds of butterfat, pounds of protein, pounds of other solids, a per hundredweight price known as the producer price differential, and a per hundredweight somatic cell adjustment. The producer price differential returns to producers their pro rata share of the proceeds of the classified pricing system. The butterfat, protein, and other solids prices paid to producers will be the same as the prices for those components announced for Class III use regardless of the utilization of the milk. Handler obligations and producer payments under the Federal orders that do not provide for component pricing will be based on hundredweight prices computed from these component prices.

Although several comments supported the proposal that multiple component pricing (MCP) be applied only to milk used in Classes II, III and IV, several comments from the Southwest area argued that it should be applied to all milk or not adopted at all. National Farmers Organization (NFO) also favored the adoption of component pricing for all classes of milk, and other comments favored the adoption of MCP for all Federal milk orders.

Several New York comments stated that MCP would not benefit producers, would serve only to impose higher costs on handlers, and shouldn't be adopted for the Northeast. Michigan Milk Producers expressed concern that the adjustment of protein value to reflect the effect of additional butterfat in cheese would increase costs in the Mideast because of the high percentage of milk used in (lowfat) Italian and Swiss cheese in that market, and requested that the Mideast market provide for the same kind of MCP pricing currently used in the Southern Michigan market.

All Federal orders outside of the three southeast orders with relatively high Class I use (Appalachian, Florida and Southeast) and Arizona-Las Vegas should contain the same component pricing plan. The affected orders have a large portion of their milk used in manufactured products, and the components in that milk that determine the yield of product available for handlers to sell are the most appropriate basis for determining its value. At the same time, there is no indication that MCP should apply to Class I milk, and it is difficult to justify pricing fluid milk on an MCP basis in terms of the economic value of components in those products.

Although the proposed rule included provisions for the Mideast order that would continue elements of the current Southern Michigan MCP plan, further study supports the conclusion that there is no benefit to establishing a component pricing plan under one order that differs significantly from the rest of the consolidated orders. This issue is discussed more thoroughly in the Mideast section of this decision.

All of the Federal milk orders will require changes to accommodate replacement of the current BFP with the multiple component pricing plan or with its hundredweight price equivalent. There will no longer be a butterfat differential under any order, but butterfat prices. The same butterfat price will be used for butterfat in Class II (with an addition of .7 cents per pound to reflect the Class II differential), Class III, and Class IV, while a separate butterfat price, announced in advance, will apply to butterfat used in Class I.

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

For the Market Administrator to compute the producer price differential, handlers will need to supply additional information on their monthly reports of receipts and utilization. Handlers that are filing reports in orders that currently

have multiple component pricing and a somatic cell adjustment will see little or no change in their reporting requirements. Under orders that are adopting component pricing for the first time, the pounds of protein, the pounds of other solids, and somatic cell information will be needed in addition to the product pounds and the butterfat currently reported. This data will be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers and, in some cases, receipts of bulk milk received by transfer or diversion.

Payments by handlers to cooperative associations for Class I milk will be calculated on the basis of the hundredweight of Class I skim milk times the Class I skim price plus the pounds of Class I butterfat times the Class I butterfat price. Payment for Class II milk will be determined on the basis of the Class II pounds of nonfat solids times the Class II nonfat solids price (or, in non-MCP orders, the Class II skim milk price times the hundredweight of Class II skim milk), and the pounds of butterfat in Class II times the Class II butterfat price. The Class II nonfat solids price is computed by dividing the Class II skim milk price by 9. Class III milk will be paid for based on the pounds of protein in Class III times the protein price, the pounds of other solids in Class III times the other solids price, and the pounds of butterfat in Class III times the butterfat price. The pounds of nonfat solids in Class IV times the nonfat solids price, and the pounds of butterfat in Class IV times the butterfat price will be used to calculate obligations for Class IV milk. Milk used in Classes III and IV in orders that do not include MCP will be paid for on the basis of the butterfat price per pound and the applicable skim milk price per hundredweight. The appropriate somatic cell adjustment will apply to milk in Class II, Class III, and Class IV.

The Class I value of milk to handlers will be calculated by multiplying the hundredweight of producer skim milk in Class I times the Class I skim price plus the pounds of Class I butterfat times the Class I butterfat price. Class II milk value will be computed on the basis of the Class II nonfat solids price times the pounds of total nonfat solids in skim milk allocated to Class II and the pounds of butterfat in Class II times the Class II butterfat price. Class III milk value will be computed based on the pounds of protein in Class III times the protein price, the pounds of other solids in Class III times the other solids price, and the pounds of butterfat in Class III times the butterfat price. The pounds of nonfat solids in Class IV times the nonfat solids price, and the pounds of butterfat in Class IV times the butterfat price will comprise the value of Class IV producer milk. Milk used in Classes III and IV in orders that do not include MCP will be paid for on the basis of the butterfat price per pound and the applicable skim milk price per hundredweight. Also included will be the appropriate somatic cell adjustment applied to milk in Class II, Class III, and Class IV, the value of overage, the value of inventory reclassification, the value of other source receipts and receipts from unregulated supply plants allocated to Class I, and the value of handler location adjustments.

For each marketwide pool using MCP, a producer price differential price per hundredweight will be computed that will represent producers' shares of the value of the pool. The total value of milk to handlers in excess of the value of producer protein, other nonfat solids and butterfat at the applicable component prices will be determined by dividing that value by the hundredweight of milk in the pool. For orders without MCP, the value of milk to handlers will be divided by the hundredweight of producer milk to compute a uniform price per hundredweight to producers.

The handler's obligation to the producer settlement fund under MCP orders will be determined by subtracting from the handler's value of milk the following values: (a) The total pounds of producer milk times the producer price differential adjusted for location, (b) the total pounds of butterfat times the butterfat price, (c) the total pounds of protein times the protein price, (d) the total pounds of other solids times the other solids price, (e) the total value of the somatic cell adjustments to producers' milk, and (f) the value of other source milk in Class I at the producer price differential with any applicable location adjustment at the plant from which the milk was shipped deducted from the handler's value of milk. In orders without MCP, handler obligations will be computed by subtracting the value of producer milk at the uniform price per hundredweight from the value of milk to the handler.

Payments to producers traditionally have been made in two payments, a partial payment based, in most cases, on the prior month's Class III price and a final payment at the uniform price to producers. This traditional payment system will continue, with any exceptions for local marketing practices noted in the regional discussions. The partial payment will be paid on a per hundredweight basis with the price equaling the combined value of the skim and butterfat prices for the lowest-priced class in the previous month. By computing the partial payment on a hundredweight basis, confusion about the use of partial month component test averages will be eliminated and handler's partial payroll processing costs should not be affected. Final payments to producers and for 9(c) milk will be based on: (a) the hundredweight of milk times the producer price differential adjusted for location, (b) the pounds of protein times the protein price, (c) the pounds of other solids times the other solids price, (d) the pounds of butterfat times the butterfat price, and (e) the somatic cell adjustment rate times the hundredweight of milk.

Since producers will be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers and to the Market Administrator must reflect the basis for such payment. Therefore the handler will be required to supply the producer not only with the information currently supplied, but also: (a) The pounds of butterfat, protein, and other solids in the producer's milk, as well as the average somatic cell count of the producer's milk, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also. The requirement that payment factors be reported to producers when producers are paid currently exists in all of the orders. Addition of the component information is purely a conforming change. Administration of these provisions should not be changed from current practices.

With advance pricing of Class I and the inherent instability of the commodity markets there may be occasions when the computation of the producer price differential results in a value of zero or below. The orders should contain no provision to prevent the producer price differential from being a negative value.

The following tables contain the prices computed based on the formulas and data series described in this final decision for the period of January 1994 through December 1998. The prices are shown for information purposes only. These prices result from the strict application of the formulas to prior marketing situations. These prices should not be interpreted as prices that would have actually occurred throughout the data period because industry participants likely would have reacted differently to the price levels that would have resulted from the

revised pricing plan than they reacted to the actual price levels.

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ACTUAL CLASS PRICES AND FINAL DECISION CLASS PRICES AND CLASS I PRICE MOVER,* BY MONTH, JANUARY 1994 THROUGH DECEMBER 1998

[Dollars per cwt.]

Year and month	Basic formula price	Final class I price mover*	Final class III price	Class III–A price	Final class IV price	Class II price	Final class II price
1994							
January	$12.41	$11.72	$11.49	$10.22	$10.22	$13.25	$11.05
February	12.41	11.73	11.64	10.23	10.19	12.26	10.90
March	12.77	12.02	12.33	10.32	10.33	12.61	11.01
April	12.99	12.90	12.89	10.34	10.41	13.19	11.10
May	11.51	12.15	11.05	10.24	10.17	13.88	11.06
June	11.25	10.56	10.37	10.09	10.10	12.18	10.72
July	11.41	11.10	10.90	10.13	10.18	10.35	10.80
August	11.73	11.63	11.06	10.38	10.42	11.84	11.03
September	12.04	11.84	11.76	10.35	10.32	12.95	10.93
October	12.29	11.92	11.74	10.36	10.31	12.15	10.90
November	11.86	11.80	11.49	10.40	10.36	12.53	11.01
December	11.38	10.91	10.88	10.17	10.16	12.24	10.87
Average	12.00	11.69	11.47	10.27	10.26	12.45	10.95
1995							
January	11.35	10.64	10.66	10.06	10.07	11.02	10.71
February	11.79	11.19	11.33	10.12	10.23	11.35	10.85
March	11.89	11.59	11.49	10.22	10.25	12.20	10.85
April	11.16	11.07	11.08	10.27	10.28	12.09	10.89
May	11.12	10.74	10.55	10.21	10.29	12.19	10.89
June	11.42	10.78	10.56	10.37	10.36	11.46	11.04
July	11.23	11.10	10.64	10.61	10.60	11.42	11.23
August	11.55	11.00	10.88	10.82	10.94	11.72	11.52
September	12.08	12.51	12.37	10.90	10.89	11.53	11.52
October	12.61	12.93	12.69	11.66	11.46	11.85	12.09
November	12.87	13.19	12.96	12.40	11.95	12.38	12.52
December	12.91	13.34	12.84	11.24	11.13	12.91	11.61
Average	11.83	11.67	11.50	10.74	10.70	11.84	11.31
1996							
January	12.73	12.82	12.32	11.16	11.15	13.17	11.84
February	12.59	12.62	12.37	10.39	10.70	13.21	11.63
March	12.70	12.66	12.52	10.32	10.49	13.03	11.17
April	13.09	12.84	13.15	10.52	10.65	12.89	11.29
May	13.77	13.68	13.12	11.90	11.74	13.00	12.12
June	13.92	14.28	13.31	15.12	14.25	13.39	14.07
July	14.49	15.41	13.41	16.01	15.32	14.07	15.95
August	14.94	15.32	14.02	15.82	15.44	14.22	16.35
September	15.37	15.74	15.17	15.85	16.09	14.79	15.89
October	14.13	15.28	13.54	14.94	14.82	15.24	15.62
November	11.61	12.33	11.33	12.18	12.10	15.67	13.03
December	11.34	11.06	10.68	11.75	11.76	14.43	12.67
Average	13.39	13.67	12.91	13.00	12.88	13.93	13.47
1997							
January	11.94	11.62	11.05	11.50	11.68	11.91	12.52
February	12.46	11.95	11.56	12.36	12.34	11.64	13.02
March	12.49	12.74	11.55	12.78	12.80	12.24	13.33
April	11.44	12.65	11.23	12.10	12.13	12.76	12.87
May	10.70	11.20	10.23	11.56	11.58	12.79	12.53
June	10.74	11.95	9.96	12.22	12.06	11.74	12.77
July	10.86	11.98	10.13	12.06	11.93	11.00	12.54
August	12.07	11.97	11.50	11.88	11.91	11.04	12.63
September	12.79	12.42	12.32	11.87	11.83	11.16	12.55
October	12.83	12.76	12.54	13.50	13.29	12.37	13.98
November	12.96	13.80	12.59	14.01	13.86	13.09	14.56
December	13.29	13.81	12.55	12.46	12.72	13.13	13.43
Average	12.05	12.40	11.43	12.36	12.34	12.07	13.06
1998							
January	13.25	12.76	12.51	12.04	12.29	13.26	13.02
February	13.32	13.03	12.87	12.89	13.07	13.59	13.78
March	12.81	12.75	12.50	12.67	12.79	13.55	13.49

ACTUAL CLASS PRICES AND FINAL DECISION CLASS PRICES AND CLASS I PRICE MOVER,* BY MONTH, JANUARY 1994 THROUGH DECEMBER 1998—Continued

[Dollars per cwt.]

Year and month	Basic formula price	Final class I price mover*	Final class III price	Class III–A price	Final class IV price	Class II price	Final class II price
April	12.01	12.69	11.50	12.88	12.90	13.62	13.59
May	10.88	13.27	10.65	13.96	13.54	13.11	14.24
June	13.10	14.20	12.65	15.38	14.89	12.31	15.54
July	14.77	15.35	14.12	15.59	15.62	11.18	16.15
August	14.99	16.25	14.21	16.52	16.38	13.40	16.96
September	15.10	18.32	14.66	19.81	18.71	15.07	19.28
October	16.04	18.06	16.05	18.13	18.19	15.29	18.67
November	16.84	16.82	16.90	14.87	15.71	15.40	16.39
December	17.34	17.44	17.51	13.48	13.39	16.34	13.98
Average	14.20	15.08	13.84	14.85	14.79	13.84	15.42
60-Month Avg	12.70	12.90	12.23	12.24	12.20	12.83	12.84

*Developed for informational purposes only. Advanced skim milk and butterfat prices will be used to calculate Class I price for succeeding month.

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3. Class I Pricing Structure

This decision adopts a Class I pricing structure that provides incentives for greater structural efficiencies in the assembly and shipment of milk and dairy products. In conjunction with other reforms discussed in this decision, the adopted Class I price structure provides the necessary changes needed to improve milk pricing in the consolidated markets. The adopted Class I pricing structure results from additional quantitative and qualitative analyses of Option 1A and Option 1B that were presented in the proposed rule issued January 21, 1998 (the PR), consideration of public comments received to these options, and the legislative requirements of the AMAA. The adopted Class I pricing structure utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will generate sufficient revenue to assure an adequate supply of milk while maintaining equity among handlers in the minimum prices they pay for milk bought from dairy farmers.

Background

Although not required by the 1996 Farm Bill, the legislation provided authorization for the Secretary to review the Class I price structure as part of the consolidation of the orders including the consideration of utilization rates and multiple basing points for developing a pricing system. In any event, the consolidation of orders requires the review of the pricing system because historically, Class I pricing provisions, as well as other Federal order provisions, have been reviewed primarily on an individual market basis. The reform effort provides the opportunity to consider and establish a nationally coordinated Class I pricing surface that uses location adjustments to the differential levels to price milk for fluid use in every county in the United States.

The PR provided an extensive review of 7 options that were developed and considered. After qualitative and/or quantitative analysis, all but Option 1A and Option 1B were preliminarily eliminated for various stated reasons. Nonetheless, the PR invited comments on any of the seven pricing options or any other pricing ideas. Also, the Department indicated a preference for Option 1B for a number of reasons. Nearly all of the public comments received in response to the PR on Class I price structure focused on the relative merits of Option 1A and Option 1B. No persuasive comments were received to cause the Department to further consider the other five options.

The USDSS Model

Option 1A and Option 1B were based to a significant degree on the U.S. Dairy Sector Simulator Model (USDSS). The USDSS was used to evaluate the geographic or ''spatial'' value of milk and milk components across the U.S. Using 240 supply locations, 334 consumption locations, 622 dairy processing plant locations, 5 product groups, 2 milk components (fat and solids-not-fat) and transportation and distribution costs among all locations, USDSS determines economic efficient location values for milk and milk components. The model initially used data from May and October 1995, and for this decision used updated data from May and October 1997.

The supply and consumption of milk used by the model are aggregated to geographic points—consumption points and supply points—to simplify a very complex problem. The production of milk and the consumption of dairy products are *fixed* at the various supply and consumption points used by the model. Plant locations were restricted to those presently processing products but plant processing locations were not constrained with respect to the volume processed. Processing costs were assumed to be uniform between locations and across plant volumes (no economies of scale). Therefore, the model allowed processing to move among available locations to find the least cost solution in terms of assembly from supply points through distribution to consumption points.

Transportation costs in the model include costs of raw milk assembly, interplant bulk shipment, and the cost of hauling finished products. Transportation costs among regions reflected not only distance traveled, but also differences in wage rates and State highway weight limit restrictions. While assembly costs and interplant bulk shipments were calculated using a linear cost function, the finished product functions were non-linear. In fact, finished product hauling costs (e.g., packaged milk) fell below raw milk assembly and hauling costs on an equivalent unit basis in many cases at distances more than 900 miles. Previous spatial modeling had assumed constantly higher finished product transportation costs versus raw milk assembly and shipping costs for all distances. The updated model results were based on transportation cost analyses, particularly the reduction in distribution costs for finished products resulting in distribution costs for these products on par with bulk milk assembly and hauling costs.

The output from the USDSS model provided information as to optimal processing locations and volumes at those locations, milk assembly, and intermediate and finished product distribution flows. It represented a least cost, or ''most efficient'' organization of the industry. Importantly for the research, the model provided the marginal values (i.e., the value of one more unit) of milk at each location. These values, technically known as shadow prices, are indicative of values that are consistent with the optimized solution. A shadow price on one unit of milk at any processing location can be interpreted as follows: If the processor at a particular location had one more unit of milk, the entire pattern of milk assembly, and product transportation could be reorganized in such a way that marketing costs, equal to the shadow price, could be saved. This notion of marginal value is consistent with economic theory on how prices are determined in a competitive market.

The significance of the shadow value in terms of milk price regulation may be stated: If the regulated price, or cost of milk, is arbitrarily set higher than the shadow price at a particular processing location, a lower cost solution could be found by processing more milk at another location. This would imply higher transportation costs for either raw milk assembly, finished product distribution, or both. Such a result clearly leads to a higher cost, less efficient system. It is also contrary to what is generally thought of as the ''orderly marketing'' of milk which is a fundamental reason for the existence and goal of Federal milk marketing orders.

It should be stressed that the calculated shadow prices of the model output provide information regarding the relationship of the prices among geographic locations. They do not provide guidance regarding the overall level of Class I prices or differential values. That is, the model does not help us understand whether the Class I differential should arrive at a Class I price of $14 in Minneapolis and $15 in New York City, or $15 in Minneapolis and $16 in New York City. However, it does tell us that the resulting Class I price difference between the two locations should be about one dollar.

A positive aspect of the USDSS model is the degree of detail available in the output. This detail is achieved through the careful assembly of spatially disaggregated data. However, it should be remembered that by its construction, the USDSS is a ''model'' and thus a simplification of a complex dairy industry. That notwithstanding, the USDSS model does provide an objective and quantitative guidepost from which to compare current federal order differentials and in considering possible alternatives.

Several factors were considered in selecting a replacement for the current [14] Class I price structure that served to form the criteria used to examine options. First, a Class I price structure must be considered from a national, as well as a local or regional, perspective. Many comments from industry addressed Class I pricing issues from a local or regional perspective in the development of options presented in the PR. These comments provided valuable information about particular markets but generally did not consider the feasibility or impact of a local or regional issue on a national basis. While remaining mindful of local and regional concerns, USDA has also evaluated alternative Class I pricing structures from a national perspective, as should be expected, given the national concerns expressed about milk pricing.

Second, a Class I price structure must recognize the location value of milk. Results from the USDSS model confirm that milk has value at location. As described earlier, the model provided shadow prices reflecting the relative values of milk and milk components at geographic locations. While the model shadow prices did not suggest Class I differentials for specific locations, they do provide a means to evaluate price relationships among locations.

Third, a Class I price structure must recognize all uses of milk. The classified pricing system contained in the Federal milk order program values milk for fluid use higher than milk used for soft or hard manufactured products. The higher Class I price encourages all milk to be used first to satisfy Class I needs. At the point where the cost of moving milk from an alternate location for Class I use is equal to the cost to supply milk for manufactured products, demand for manufactured products influences a market's ability to procure milk for Class I needs. Thus, all uses of milk must be considered when evaluating a national Class I pricing structure.

Finally, a Class I price structure must meet the requirements of the AMAA. The broad tenet of the AMAA is to establish and maintain orderly marketing conditions. For the Federal milk order program, this is achieved primarily through classified pricing and pooling. With regard to pricing, it is recognized that the objective of the AMAA is to stabilize the marketplace with minimum prices, not to set market prices. The pricing criterion of the AMAA, section 608c(18), requires prices that are reflective of economic conditions affecting supply and demand for milk and its products. In this regard, consideration was given to whether the proposed prices would generate sufficient revenue for producers necessary to maintain an adequate supply of milk. Equally important, the prices need to provide equity to handlers with regard to raw product costs as required by section 608c(5) of the AMAA.

Evaluation Criteria

In evaluating the final Class I pricing options, nine performance criteria, based upon regulatory objectives and requirements of the AMAA, were again used as they were in the PR. The evaluation criteria are divided into two categories, objective and administrative. The objective criteria are as follows:

1. Ensure an adequate supply of milk for fluid use. Class I price levels need to provide a sufficient price signal to maintain an adequate supply of milk for fluid use. This supply level can be achieved through either the movement of milk to where it is needed, increased production, or some combination of both.

2. Recognize quality (Grade A) value of milk. Grade A milk is required for fluid use. Additional costs of obtaining and maintaining Grade A status need to be reflected in Class I prices.

3. Provide appropriate market signals. A Class I price should send timely signals to the market regarding supply/demand conditions.

4. Recognize value of milk at location. Basic economic theory, validated by actual market observations and University-based research, affirms that milk for Class I use has a different value at different locations. This value needs to be reflected in the Class I price in order for the system to recognize and resemble the market rather than interfere with the market.

5. Facilitate orderly marketing with coordinated system of prices. A system of Class I prices needs to be coordinated on a national level. Appropriate levels of prices will provide alignment both within and among marketing areas. This coordination is necessary for the efficient and orderly marketing of milk.

6. Recognize handler equity with regard to raw product costs. Appropriate levels of Class I prices provide known and visible prices at all locations thereby ensuring that handlers

[14] Any references to the ''current'' system of Class I prices or the ''current'' price structure are to be interpreted as those established in or after the final decision based on the 1990 national hearing issued March 5, 1993 (58 FR 12634).

are able to compete for available milk supplies on an equitable basis.

Three administrative criteria are identified and described as follows:

1. Minimize regulatory burden. The Class I price structure should not significantly increase the burden on handlers, particularly small businesses. This would include increased reporting requirements and record keeping, as well as possible increases in administrative assessments should Market Administrators be required to manage a more complex regulatory system.

2. Minimize impact on small businesses. The Class I price should be set at a level that does not disadvantage small businesses in competition with large businesses.

3. Provide long-term viability. The Class I price structure should be expected to operate for an extended time period without major modifications.

The nine evaluation criteria listed above are used to qualitatively evaluate each of the options. Each option is evaluated based on how the option performed compared to the current system, either better than, worse than, or the same as, for each performance criterion. The results of the qualitative analysis provided a preliminary framework for quantitative analysis using a multi-regional model developed by the Economic Research Service (ERS) of the Department.

As previously indicated, Option 2—Relative Use Differentials, Option 3A—Flat Differentials, Option 3B—Modified Flat Differentials, Option 4—Demand-Based Differentials, and Option 5—Decoupled Baseline Class I Prices with Adjustors, were eliminated from further consideration. They were eliminated for various reasons including failure to adhere to AMAA requirements, the likelihood of creating disorderly marketing conditions, and impacts on small businesses. A discussion of the five eliminated options, including the evaluation against the criteria and/or quantitative analysis were described in detail in the PR.

The Final Options

Three options formed the basis for final consideration and are described below. All options present national Class I pricing structures developed utilizing the USDSS model. The options continue to vary in their reliance and application of the USDSS model but all remain based on economic principles contained within the model. These options include Option 1A, a modified Option 1B, and the adopted Class I pricing structure.

Option 1A: Location-Specific Differentials

Option 1A establishes a $1.60 per hundredweight fixed differential for three surplus zones (Upper Midwest, West, and Southwest) within a nine-zone national price surface, and for the other six zones, an added component that reflects regional differences in the value of fluid and manufacturing milk. This option emphasized current supply and demand conditions with the USDSS model output.

Some minor changes were made to the Option 1A differential levels presented in the PR. The changes only involved adjusting certain county specific differentials to provide for more appropriate price alignment in several counties in the northeast, seven counties in Florida, and one county in North Carolina. Other than these minor changes, Option 1A is the same as published in the PR.

Modified Option 1B: Relative Value-Specific Differentials

This option continues to establish Class I differentials based on a relationship between prices and geographic location as indicated by the USDSS model, but uses more current data. Modifications were made to Option 1B with respect to how adjusted Class I differentials were established for each county in the United States. This modified version of Option 1B continues to establish differential levels by setting and equating the relative value-specific differential of $1.20 per hundredweight in Minneapolis, Minnesota. The Option 1B differentials in the PR relied on an algorithm to set location adjusted differentials in every county. The modified Option 1B price surface takes into full account all known plant locations as was done in the development of Option 1A. This approach ensures that all plants similarly located would have similar prices.

The Adopted Class I Price Structure

The adopted Class I pricing structure establishes a price surface that also utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will result in prices that generate sufficient revenue to assure an adequate supply of milk. The differential levels will better maintain equity by raising the level 40 cents per hundredweight higher than the level proposed in Option 1B and in modified Option 1B. The higher differential level reduces the likelihood of class-price inversions, where the Class I prices are below the manufacturing milk prices for the month.

The USDA Multi-Regional Dairy Sector Model

Option 1A, modified Option 1B and the adopted Class I pricing structure were evaluated qualitatively against the evaluation criteria and quantitatively utilizing the USDA multi-regional dairy sector model. This model was developed to answer some very specific questions about possible changes in the dairy sector, particularly changes being considered in milk marketing orders. The main focus of the model's development and use was to quantitatively examine the impacts of the changes under consideration in the classified pricing of milk and dairy products in the milk order system on an order-by-order and regional basis, and for other areas of the country not currently a part of the milk order system.

The multi-regional model establishes a baseline consistent with the USDA official baseline projections for the dairy sector. It assumes 36 regions. These include: 32 Federal Milk Marketing Order areas (including Tennessee Valley that was terminated on October 1, 1997) and four non-Federally regulated areas (California, Other Unregulated Western Counties, Unregulated Northern New York and New England and Other Unregulated Eastern Counties) and projects baseline information through the year 2005. The demarcation between the unregulated Western and Eastern counties follows a line extending north to south on the eastern State borders of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.

The model baseline also assumes that the Class III price would be the Basic Formula Price (BFP), the Class II price would be the BFP plus 30 cents, each region's Class I price would be the BFP plus the current Class I differential and the Class III-a price would continue. All other changes to milk order provisions together with the three price surface alternatives are presented as changes from the baseline over the period of the years 2000 through 2005. Each of the alternatives include the impact of consolidation into 11 regional markets and moving to wholesale product price formulas in setting the class prices.

From its baseline, the model has the ability to quantify the impacts of pricing changes in the consolidated regions and in estimating how the end use of milk may be expected to change with the changes in how the order program will price milk. The model can generate long-term supply, demand, and price

projections that are consistent with the USDA official baseline projections.

The model estimates regional milk production based estimates of milk-per-cow and number-of-cows for the 36 defined areas. The milk cow inventory and milk-per-cow estimates for each area is based upon reported state data. Changes in the inventory of cow numbers and output-per-cow for each region are related to regional farm milk prices and feed costs, and past regional net returns to dairy farmers (a measure of profitability). Milk marketings in the region are in direct relationship to milk production in the region.

Once the volume of regional milk marketings is determined, marketings are distributed to seven uses: bottled whole milk, bottled low-fat milk, soft manufactured dairy products, American cheese, other cheese, butter, and nonfat dry milk. Each of the seven uses has a retail demand equation. Generally, the demand for the specific product is a function of per capita income, the retail price or the Consumer Price Index (CPI) of the product, and the price or CPI of a substitute product (e.g. margarine for butter).

Demands for raw milk for use in fluid milk products and soft manufactured dairy products have priority in the model and such demands are filled regionally from the region's raw milk supply before the national demands of the hard manufactured product markets are met. The Class I and Class II uses of milk in each region are based upon differences in prices and population by region. A CPI for fluid milk and other dairy products are estimated for each region based upon a margin mark-up equation and the region's Class I and Class II prices. These values are used to estimate regional per capita use, and when multiplied by projected population for each region, determine the amount of milk allocated to Class I and Class II uses.

The sum of each region's raw milk supply less the milk used in Class I and Class II results in a measure of the national manufacturing milk supply. The model solves for equilibrium in supply and demand by solving for wholesale prices of cheese, butter, and nonfat dry milk that equate the supply and demand in the hard manufactured dairy product markets. The hard manufactured product markets, the Class I markets, the Class II markets, and the farm level raw milk supply are linked through price equations that relate the changes in wholesale product prices to changes in prices for milk used in Class I, Class II, Class III, Class III-a (or Class IV) and the farm level all-milk price.

A Class III and Class III-a (or Class IV) price is calculated from the model's estimates of wholesale cheese, butter, and nonfat dry milk prices; and these Class III and Class III-a (or Class IV) prices are used to predict Class I and Class II prices. Changes in Class I and Class II prices affect demand for Class I and Class II products and the amount of milk available nationally for cheese, butter, and nonfat dry milk production. Likewise, the amount of milk used in each class in each region and the regional class prices affect the farm level all-milk price and the supply of raw milk in the region and therefore the amount of milk available nationally for cheese, butter, and nonfat dry milk production. The model iterates until an equilibrium is achieved for the year in the wholesale product markets and then advances to the next year.

A brief summary of the quantitative impacts of each alternative price surface is included with the qualitative analysis presented below. A detailed description of the USDA multi-regional dairy model, as well as a complete discussion of the impacts of the pricing alternatives are contained in the Final RIA.

Option 1A: Location-Specific Differentials

Option 1A would establish a nationally coordinated system of location-specific Class I differentials reflecting the relative economic value of milk by location. An important feature of the option is the location adjustments that geographically align minimum Class I milk prices paid by fluid milk processors nationwide regardless of the defined milk marketing area boundaries or order pooling provisions. A basic premise of Option 1A is that the value of milk varies according to location across the United States.

Compared to the modified Option 1B and the adopted Class I price structure, this option tends to most reflect the current Class I pricing surface. Although extremely similar to the current Class I price surface, there are distinct differences. Option 1A would establish a nationally coordinated price surface that uses location adjustments to adjust the price of milk for fluid use for every county of the United States.

Under Option 1A, Class I differentials are the lowest in geographical areas evidencing the largest supplies of milk relative to local/regional fluid milk needs. The differentials become progressively higher as they move from these areas to markets with less production relative to demand for fluid milk. Nine differential zones provide the basis for establishing the price structure. These zones were established based on results of the USDSS model, knowledge of current supply and demand conditions, and recognition of other marketing conditions such as fluid versus manufacturing markets, urban versus rural areas, and surplus versus deficit markets.

Class I differentials under this option range from a low of $1.60 per hundredweight in the lowest valued zones of the Upper Midwest, Southwest, and West, where there are abundant supplies of milk in excess of fluid milk use, to a high of $4.30 per hundredweight in Florida, where there are deficit supplies of milk for fluid use.

Analysis Based on Evaluation Criteria. Option 1A performs equal to or better than the current Class I system in each of the evaluation criteria. This is largely explained by the adjustments, improvements, and fine-tuning made to the current system of Class I differentials Option 1A was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. Option 1A performs essentially the same as the current price structure in ensuring an adequate supply of milk for fluid use. Option 1A changes current differential levels in some regions to more accurately reflect current milk supply-demand conditions. Option 1A will have minimal impacts on farm level milk prices and should ensure adequate supplies of milk for fluid use.

2. Recognize quality (Grade A) value of milk. Option 1A recognizes the quality value (Grade A) of milk through the addition of a differential that begins at $1.60 per hundredweight in the base zone.

3. Provide appropriate market signals. Option 1A adjusts and refines the existing Class I price structure to provide appropriate market signals. In some geographical areas, Class I differentials would be increased. These changes indicate that current Class I differential levels are not high enough to attract adequate supplies of milk to the applicable fluid milk markets. In certain other areas, Class I differentials would be lowered, indicating that they exceed levels necessary to adequately supply the associated markets with their fluid milk needs.

4. Recognize value of milk at location. The spatial values of milk reflected in Option 1A recognize the value of milk at location more accurately than the current system for two principal considerations. First, in structuring the differentials in Option 1A, the effect of current Class I differential levels on milk supplies, demand, and dairy farmer returns regionally during the past decade were considered. Second, the

relative values of milk and milk components at geographic locations throughout the United States from the USDSS model results were considered.

5. Facilitate orderly marketing with coordinated system of prices. Option 1A provides a comprehensive national pricing surface for Class I milk that establishes a value for Class I milk in every county. Thus the price any processor would pay for milk would be the same regardless of which order the processor is regulated under. As such, Option 1A is an improvement over the current price structure which evolved in a piecemeal fashion. Additionally, the Class I differentials and location adjustments in Option 1A would facilitate more efficient and orderly marketing of milk for fluid use through the nationwide coordination of prices when compared to the current system.

6. Recognize handler equity with regard to raw product costs. Class I differentials proposed under Option 1A are consistent with the inherent economic value of milk at location. The coordination and alignment of prices, based upon cost differences and current marketing conditions, better ensures handlers of equity in competing for available milk supplies.

Option 1A was evaluated against the objective criteria as follows:

1. Minimize regulatory burden. Option 1A would not change the regulatory burden of the Federal order program. Option 1A would not result in increased reporting, record keeping, compliance, or administrative costs to handlers.

2. Minimize impact on small businesses. In regions where more of the actual value of fluid milk would be reflected in the differentials than is currently reflected, small businesses may have a marginal improvement in their relative competitive bargaining position vis-a-vis large businesses. This is based on the concept that large businesses (producers, cooperatives or handlers) are better able to negotiate premiums above minimum order prices due to advantages attained from their size. Overall, this option is not expected to materially impact small businesses differently than the current price structure.

3. Provide long-term viability. To the extent the location adjusted Class I differentials under Option 1A will correct instances of price misalignment and more accurately reflect the economic value of milk by location, the long-term viability of Option 1A is expected to exceed that of the current price structure.

Because the USDSS model only determines the relative value differences for fluid milk between location, it could not be used for determining an appropriate differential level. Option 1A utilizes $1.60 per hundredweight as the minimum differential level. A complete explanation of the factors that developed and explain this differential level was set forth in the PR. In summary of those reasons, the $1.60 per hundredweight differential level is used in Option 1A because it would ensure a sufficient supply of milk for fluid uses in the most surplus regions.

Option 1A will have little impact on small businesses, either producers and processors. In certain situations, it may improve a small business' competitive marketing position as compared to current levels. Because the $1.60 base zone differential includes a competitive factor as discussed previously, more of the actual value of fluid milk will be reflected in the minimum Federal order price. This may decrease the level of the over-order value that must be negotiated between processors and producers. Doing this would provide small businesses with a more equitable competitive position.

Quantitative analysis of Option 1A using the USDA multi-regional model evaluated the various impacts of this pricing option. Overall, the magnitude of price and income changes under Option 1A is relatively small when compared to the baseline. Option 1A results in an 8-cent increase in the average Class I price for all current Federal orders. Further details of the impact of these Class I price changes, and others, that are based on the USDA model results are available in the final Regulatory Impact Analysis (RIA).

Modified Option 1B—Relative Value-Specific Differentials

Modified Option 1B would also establish a nationally coordinated system of Class I differentials and adjustments that recognizes several low pricing areas. Modified Option 1B more directly applies the USDSS model's optimal solution in developing the Class I price structure.

The modified Option 1B differentials differ from those published in the PR. The differences are explained largely by a more complete consideration of all known plant locations. The Option 1B differential values published in the PR relied on an algorithm to establish differential levels for those counties that were not part of the optimal solution. However, all plant locations need to be considered for setting prices at these locations and prices must be aligned between locations. This has been done in modified Option 1B and results in a ''zoned'' structure of relative price differences that are aligned.

Modified 1B Differential Level

As pointed out in the Option 1A discussion, the USDSS model only provided information regarding relative differences in prices between geographic locations and offers no information for determining the level of Class I differentials used in setting Class I prices. The same is true for modified Option 1B. Modified Option 1B relies much more directly on the geographic price relationship results of the USDSS model in defining the structure and relative differences represented in its differential schedule for all locations.

While modified Option 1A establishes a $1.70 Class I differential at Minneapolis, adjusted from a minimum level of $1.60 (the lowest differential level at any location in Option 1A), modified Option 1B sets a Class I differential at Minneapolis at the current level of $1.20 per hundredweight. It is important to note that any modified Option 1B zone could be discussed as the ''starting'' point differential. This decision only refers to and references Minneapolis at the $1.20 level for illustrative purposes since it provides a degree of continuity in how Option 1B was presented and discussed in the PR.

Because Option 1B was expected to result in a significant change to the industry in both the pricing surface and the level of Class I differentials, it was proposed in the PR in conjunction with three alternative transitional phase-in programs. However, none of the phase-in programs received public support.

The final RIA statement provides the full measure of the USDA multi-regional model analysis of this option. In short, modified Option 1B is rejected because the differential levels it would set would result in minimum prices that would not generate sufficient revenue to assure an adequate milk supply. Additionally, for markets with lower differential levels, there is a greater potential for class-price inversions that would increase the likelihood of disorderly marketing conditions.

The Adopted Class I Price Structure

The adopted Class I pricing structure results from additional quantitative and qualitative analyses of Option 1A and Option 1B, consideration of public comments received to these options, and the legislative requirements of the AMAA. The adopted Class I pricing structure utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will generate sufficient revenue to

assure an adequate supply of milk and better maintain equity among handlers by raising the level 40 cents per hundredweight higher than the level used in modified Option 1B.

The Class I differential level was set by determining the differential level that results in prices which will generate sufficient revenue to bring forth an adequate supply of milk throughout the Federal order system. As in both Option 1A and modified Option 1B, the adopted Class I pricing structure adds a differential value to the basic formula price in setting Class I milk prices. Additionally, it is set at a level that minimizes the likelihood of class-price inversions, discussed in the BFP section of this decision. The $1.60 Class I differential level (at Minneapolis) achieves these objectives for a nationally coordinated Class I pricing structure.

Increasing the differential level by 40 cents per hundredweight at all locations does diminish the reliance on the marketplace and over-order premiums in establishing market prices inherent in modified Option 1B. However, the adopted Class I pricing structure retains the more efficient pricing structure that offers increased cost savings in the organization of the nation's milk supply and in the transportation of milk and dairy products.

The adopted Class I pricing structure moves the dairy industry into a better organized and aligned pricing system while continuing to assure orderly marketing conditions for producers and handlers. Restructuring the relative-value differential relationships at the level specified will, among other things, generate sufficient revenue in the national system of Federal orders to bring forth an adequate supply of milk. The higher level will also minimize instances of class-price inversions. The location adjusted differentials established for each county are set forth in the Class I Price Structure Maps, and in the General Provisions § 1000.52. The following table sets forth the location adjusted differentials at selected cities.

COMPARATIVE CLASS I DIFFERENTIALS AT SELECTED CITIES UNDER THE ADOPTED CLASS I PRICE STRUCTURE

[Dollars per hundredweight]

City	Current	Adopted	Difference
New York City, NY	3.14	2.50	(0.64)
Charlotte, NC	3.08	2.55	(0.53)
Atlanta, GA	3.08	2.90	(0.18)
Tampa, FL	3.88	4.20	0.32
Cleveland, OH	2.00	2.00	0.00
Kansas City, MO	1.92	1.90	(0.02)
Minneapolis, MN	1.20	1.60	0.40
Chicago, IL	1.40	1.95	0.55
Dallas, TX	3.16	2.10	(1.06)
Salt Lake City, UT	1.90	1.50	(0.40)
Phoenix, AZ	2.52	1.55	(0.97)
Seattle, WA	1.90	1.45	(0.45)

The adopted Class I pricing structure was evaluated against the objective criteria as follows:

1. Ensure an adequate supply of milk for fluid use. The adopted Class I pricing structure establishes lower differentials than current levels in many of the proposed markets. Because the differential level is higher than under modified Option 1B, the adopted Class I pricing structure relies less on the use of over-order premiums as the method to attract adequate milk supplies for fluid purposes. While over-order premiums will remain useful for allowing the market to find the final value of Class I milk, the higher-level differentials of the adopted Class I pricing structure will better serve to ensure that the minimum prices set by the orders will attract an adequate supply of milk for fluid use.

2. Recognize quality (Grade A) value of milk. As with Option 1A and modified Option 1B, the adopted Class I pricing structure similarly recognizes the quality (Grade A) value of milk through the use of a differential added to the basic formula price.

3. Provide appropriate market signals. The adopted Class I pricing structure provides appropriate market signals in all markets even though the adopted Class I pricing structure lowers differentials in some markets. Over-order pricing will likely function in most, if not all markets, even with the higher-level differentials. However, the higher differential level better ensures that the minimum prices established under the orders will generate a sufficient supply of milk and better ensures equitable minimum prices among regulated handlers than does modified Option 1B. Additionally, because class-price inversions are mitigated, more appropriate price signals are provided to the marketplace.

4. Recognize value of milk at location. The adopted Class I pricing structure appropriately recognizes the value of milk at location. It is based on the location value of milk as determined by the May 1997 results of the USDSS model. It also aligns the relative-value differences while adhering to spatial-value differences determined by the model giving full consideration to all plant locations. Thus, in utilizing the model results that determine the most efficient spatial value of milk for fluid use to establish the price surface, the adopted Class I pricing structure should perform better than the current system.

5. Facilitate orderly marketing with coordinated system of prices. The adopted Class I pricing structure establishes a coordinated system of differentials with appropriate location adjustments. Like the other two options, a comprehensive national pricing surface has been developed that establishes a value for Class I milk in every county. As a result, a processor's regulated price will be the same regardless of the order regulating it.

6. Recognize handler equity with regard to raw product costs. With the 40-cent per hundredweight increase in the differential level, processor equity is better maintained under the adopted Class I pricing structure. With price increases or decreases in some areas, the markets will need to adapt to the new pricing structure. While it is not the intent of the Federal order system to set market prices, the reflection of a larger portion of the price under regulation provided by the adopted Class I pricing structure, better assures handlers a reasonable degree of equity with regard to raw product costs.

The adopted Class I pricing structure was evaluated against the administrative criteria as follows:

1. Minimize regulatory burden. The adopted Class I pricing structure would not change the regulatory burden of the Federal order program in terms of reporting, recordkeeping, compliance, and administrative costs to handlers.

2. Minimize impact on small businesses. Under the adopted Class I pricing structure, a fuller measure of the Class I value needed to attract adequate milk supplies will come from regulated prices. Reliance on over-order payments negotiated outside the Federal order system is diminished, but continues to be recognized as in either the current system or in Option 1A. As a result, it is likely that small handlers who might have been disadvantaged by the original Option 1B will not be under this modified version.

Federal order Class I prices are mandatory and affect processors in a specific area equally as minimum enforced price levels. Since more of the actual value of Class I milk is represented in regulated prices, the potential for large handlers to have an advantage over small handlers is mitigated in competing for a supply of milk under the adopted Class I pricing structure. Large processors often have advantages related to economies of scale and may be able to temporarily inflate over-order prices they are willing to pay until they have forced smaller businesses out of business who could not afford to pay higher prices.

Additionally, with higher differentials and resulting higher producer blend prices, the balance of market power between producers and processors is better maintained. Producers will not need to negotiate with processors to obtain a better price for their milk to the extent that would have been expected under modified Option 1B. Small dairy farmers have less production volume, and typically have higher per hundredweight production costs. Hence, small producers who are less able to negotiate for prices that may be higher than the Federal order minimum price will be better served under the adopted Class I pricing structure. When too much reliance is placed on the use of over-order premiums (as in modified Option 1B), it is likely that dairy farmers defined as small businesses would benefit less from the regulation of milk marketing.

Small businesses may be impacted under the adopted Class I pricing structure as adjustments are made in response to the new pricing structure. However, to the extent that small producers may not be able to bargain with processors for over-order premiums to adequately cover their costs, the increased differential level in the adopted Class I pricing structure minimizes this potential outcome. The inability of small processors to compete with large processors at price levels above Federal order minimums is similarly eased.

3. Provide long-term viability. The adopted Class I pricing structure provides for a more efficient pricing structure. This option is an alternative from the current way the Federal order program has approached Class I pricing. Historically the Class I price established under Federal orders represented the minimum value of Class I milk in the marketplace based on the cost of maintaining Grade A milk and associated marketing costs together with the cost of alternative milk supplies. The adopted Class I pricing structure provides the opportunity for increased marketing efficiencies by promoting a more optimal organization in the assembly and distribution of milk products while establishing prices that will assure an adequate milk supply. In this way, it is expected to have long-term viability.

Quantitative analysis of the adopted Class I pricing structure using the USDA multi-regional model evaluated the various impacts of this pricing option. The evaluation assumed the eleven market order consolidation, four classes of milk use, and the BFP replacement presented earlier in this decision. Class I differentials are reduced from current levels in about half of the marketing orders. The reductions range from 4 cents per hundredweight in the Ohio Valley order to as much as $1.18 per hundredweight in the Eastern Colorado order. The Class I differential for the Eastern Ohio-Western Pennsylvania order would be unchanged. For the other markets, the Class I differential is increased, ranging from 8 cents per hundredweight in the Greater Kansas City order, to 57 cents in the Southeastern Florida order.

Under the adopted Class I pricing structure, six current milk orders would have Class I differentials lower than the differential established at Minneapolis. This gives explicit recognition that these other areas have adequate milk supplies to satisfy Class I demands at lower costs. For areas needing supplemental supplies of milk for fluid use, the Class I differentials are reflective of transportation costs from the closest alternative supply area.

According to the USDA model analysis, the adopted Class I pricing structure differential level would increase order marketings over the six-year analytical period of the years 2000–2005 when compared to the baseline. Raising the differential, in conjunction with shortening the advance pricing notice of Class I prices by 18 days as discussed in the BFP section of this decision, minimizes class-price inversions. The rise in the all-milk price in the first year of implementation is expected to stimulate additional milk production in the milk order system. This additional milk production results primarily from Class I prices being established by using the expected higher Class IV prices in the year 2000. Over the six-year analytical period, the annual all-milk price is expected to drop by about two cents per hundredweight, but the annual average of marketings in the entire milk order system is expected to increase by about 8.3 million pounds when compared to the baseline. This increase in marketings is largely explained by the pooling of milk that was not pooled in recent years because of class-price inversions.

The USDA analytical model suggests that annual cash receipts, or revenue, for producers under the adopted Class I pricing structure will increase in many markets when compared to the baseline. The marketing areas expected to have the largest average annual increases in producer revenue include the following orders: Chicago Regional—$43.1 million, New York-New Jersey—$18.7 million, Iowa—$17.5 million, Southern Michigan—$14.1 million, and Tampa Bay—$12.2 million. Other markets would be expected to have lower estimated annual cash receipts over a six-year analytical period of the years 2000–2005 from the baseline. The marketing orders with the largest reductions include: Texas (−$39.7 million), Middle Atlantic (−$39.5 million), Eastern Colorado (−$11.4 million), Southwest Plains (−$11.3 million) and Central Arizona (−$10.4 million).

The USDA analytical model suggests that as the adopted Class I pricing structure results in lower Class I prices in many markets, the average annual impact on retail prices to the consumer for fluid milk will be about 2 cents per gallon less, on average, over the six-year period of the years 2000–2005 when compared to the baseline. From a national perspective, this translates into consumer savings of about $79 million for fluid milk products annually. Sales of manufactured dairy products over the same time period are expected to decrease somewhat, but expenditures for these products will be higher.

While only summarized here, the complete USDA multi-regional model analysis of Options 1A, modified Option 1B and the adopted Class I pricing

structure are included in the final RIA statement.

Comparison of Option 1A and the Adopted Class I Price Structure

Option 1A and the adopted Class I pricing structure have similarities but rely on differing methods in constructing a nationally coordinated Class I price structure. Both recognize that milk has a location value. Both utilized the USDSS model results to establish the price surface. Both establish Class I prices by adding a fixed differential to the implied value of milk used in manufacturing. Both establish a price surface that assigns a price to every county in the United States and would assure that a price at any particular location will not vary depending upon the marketing order under which the milk is pooled.

Although similar in the above respects, they also differ. First, they differ in the method of determining the level of the Class I differential. Option 1A relies on finding that Class I differentials would be established at a level that more fully reflects the additional value of Class I milk in the most surplus regions. The adopted Class I pricing structure relies on the finding that the national system of milk order needs to result in prices that will generate sufficient revenue to bring forth an adequate milk supply.

Secondly, they differ in how the price surface should be established regardless of the level. Option 1A provides for the alignment of resulting Class I prices by evaluating the cost of alternative supplies based upon the current Class I differential structure. This results in a surface that is smoother and flows primarily from north to south and west to east. However, the adopted Class I pricing structure relies on a cost minimization model to provide for a more efficient organization and structure in milk supply and distribution. Thus, it results in more limited relative price differences and in a price surface that is flatter.

Thirdly, they differ in their reliance on the USDSS model results. Option 1A recognizes the value associated with the model results but relies on knowledge of specific marketing conditions and practices to make adjustments to existing differentials. The adopted Class I pricing structure, on the other hand, relies more directly on the USDSS model results that indicate the optimal spatial values for fluid milk which serve to promote market efficiencies, and implements this structure to encourage market efficiency within the dairy industry.

Public Comments

The majority of comments received in response to the PR dealt with the Class I price structure. In all, 4,217 comments were received on this issue. Of this number, 3,579 comments indicated support for the adoption of Option 1A and 436 comments supported the adoption of Option 1B. Some support USDA of both Class I pricing options called for changes in each of the Option's details. No comments were received that supported any sort of transition programs suggested in adopting Option 1B. Some comments, while supporting Option 1B in its general theme, proposed adopting Option 1A initially and phasing in the adoption of Option 1B over an extended time period.

It is clear from the comments received that there is broad-based support for adopting Option 1A. These commenters explained what they thought were and should be the most important goals of the milk marketing order program, the pricing policies and features that it should contain to achieve these goals, and their view of the legislative requirements that must be incorporated into milk orders. Such was similarly expressed in explaining both the support for, and opposition to, Option 1B.

Supporters for Option 1A generally saw it as the best Class I pricing option that would properly reflect the fullest measure of the AMAA's articulated goals and requirements. These supporters expressed the limitations of relying too much on the free market in setting milk prices. For example, supporters of Option 1A indicated that milk marketing orders exist because dairy farmers are at a distinct disadvantage in their marketing relationship with handlers who buy their milk. They cited the characteristics of milk—that it is highly perishable, bulky, is produced daily and must be marketed nearly as often, and is expensive to transport—as making it a unique commodity. Unlike other commodities, grains for example, milk cannot be withheld from the market in the hope for a better price, nor can it be shipped long distances in search of a higher price because transportation costs quickly erode the benefits of a higher price. Dairy farmers don't even know the price they will receive for their milk in advance of having to ship to market, they noted.

Also, supporters of Option 1A were of the opinion that marketing conditions faced by dairy farmers today are fundamentally no different than they were when the order program first began. They point out that even though there are fewer and larger dairy farms with greater milk production, the number of plants at which to sell milk are fewer than when the order program first began. Implicit in this relationship, they said, is the degree of uneven market power that handlers have over producers. One commenter noted that the ratio of dairy farmers to milk plants today has increased threefold since 1960, an indicator of the growth in the concentration of market power among handlers. Even the prominence of dairy farmer cooperatives over the years has had little significant impact on the relative bargaining power of dairy farmers, noted many commenters. While these organizations have served with varying degrees of success in negotiating for higher milk prices for their members, they said, cooperatives do not and cannot have the ability to significantly impact prices because no entity can control or limit the supply of milk to the marketplace. Because dairy farmers face such a skewed marketing situation, most commenters view milk marketing orders as the only practicable tool to assure farmers receive a fair price for their milk.

Supporters of Option 1A indicated that because of the continuing marketing situation they face, no basis exists for concluding that more emphasis should be placed on a dairy farmer's ability to negotiate prices with handlers. According to these commenters, relying too much on the marketplace would only provide the incentive for producers to needlessly compete with each other to supply the higher-valued fluid market. Those that are successful might receive more for their milk than those who could not, but to this end, there is no guarantee that all handlers would pay the same price for milk. Nor is there a guarantee that handlers would share the higher-valued use of milk equitably with those producers. This, they said, results in disorderly marketing conditions and the pitting of farmer against farmer in unnecessary and destructive price competition. It was these conditions, they note, that led to creation of milk orders and justified the marketwide pooling and minimum pricing provisions contained in milk orders today. Only Option 1A, say its supporters, best establishes the proper value of milk that, together with classified pricing and marketwide pooling, assures the highest degree of equity for both producers and handlers.

Supporters of Option 1A agreed and recognized that it is important to have a Class I pricing structure that is national and more reflective of

marketing conditions for milk. Some commenters were of the opinion that the geographic pattern of milk production can be expected to remain as it is today. They noted further that Option 1A gives explicit recognition to more than a single reserve supply area in the country, and that Option 1A would assign the lowest differential in each of these reserve supply areas, what many supporters of Option 1A viewed as significant pricing reform.

Option 1A supporters also thought that the USDSS model served as an excellent tool in developing a Class I price structure. However, they also recognized the limitations of relying too much on this analytical model because it does not bring into consideration all of the other necessary judgements and factors that cannot be included in a model. For example, many commenters pointed out that while Option 1A used the USDSS model as a guide, it cannot be relied upon for making adjustments to conform with known relationships between and among geographic and actual plant locations. Further, said supporters of Option 1A, the model is static, and cannot estimate the dynamics of changes that may result in supply and demand conditions over time.

In summary, Option 1A supporters indicated Option 1A best assures the continuation of dairy farmers receiving a fair price for their milk. Processors, they also pointed out, would not see a significant change in their ability to compete for a milk supply since most of the value of fluid milk would be contained in the regulated minimum price. They concluded that any changes to milk orders that would diminish these outcomes would be harmful to the dairy industry and to the public interest.

Opponents to Option 1A view it as maintaining too much of the status quo and not addressing the reform needed in Class I pricing. The opponents of Option 1A also view the current Class I pricing structure as seriously flawed. In their view, the current system relies on recognizing the Upper Midwest region as the reserve supply of milk for the country when this is no longer the case. They see Option 1A as largely maintaining this viewpoint.

Opponents to Option 1A and the current Class I pricing structure are of the opinion that today's differential levels and Option 1A differential levels are too high, or at least higher than necessary to attract adequate milk supplies in many areas. Because Class I differentials are too high, they said, improper economic incentives exist in many areas for increased milk production—in fact overproduction—beyond what is needed to meet Class I demand. When this happens, opponents to the current system and Option 1A said, all producers nationally are negatively impacted because the overproduced milk supply drives down prices for milk used in manufactured dairy products which compete in a national market. They noted this is especially injurious to dairy farmers in markets where most of the milk produced is used in manufactured dairy products.

Adding to this, the opponents of the current Class I pricing system and Option 1A are also of the opinion that technology is available today to meet the supplemental milk needs of any milk-deficit area. Not only do they think that higher-than-necessary Class I differentials result in artificially-induced overproduction, they also believe that resulting high Class I prices may be reducing fluid milk consumption by consumers. They are of the opinion that it is more appropriate and efficient to attract milk to meet fluid demands by compensating those who incur the cost of shipping milk from surplus areas rather than paying a high price to local producers in milk-deficit areas to bring forth a sufficient supply of local milk to meet fluid demands.

Supporters of Option 1B indicated support for the more market-oriented theme reflected in this Class I pricing option. These supporters commented that Option 1B will allow milk prices to respond more appropriately to changing supply and demand conditions. Because of this, they said, the milk order program will become more market-oriented. The overall pricing structure offered in Option 1B, they say, flattens the resulting level of Class I prices throughout a larger portion of the country, thereby providing more of a level playing field for producers everywhere.

Supporters of Option 1B view the increased market-oriented theme as the proper direction in which to bring the Class I pricing structure as the milk order program is reformed. Not only is it consistent, in their view, with the reform mandates established by Congress in enacting the 1996 Farm Bill, the movement to a more market-oriented milk order program will provide incentives for private sector innovations that will benefit dairy farmers and consumers.

Supporters of Option 1B take a fundamentally different view than supporters of Option 1A on the appropriate level of the Class I differential. Supporters of Option 1A are of the opinion that Class I differential levels should be set high enough to assure the least amount of price inequity among handlers and should also be at levels high enough to not lower returns to producers. However, the supporters of Option 1B think that Class I differential levels should be set at minimum levels that will allow the effective price for milk to be much more determined by the marketplace. In this way, they said, milk production and prices would respond more effectively to changing supply and demand conditions. By taking this approach, they say, Option 1B Class I differential levels will provide a sufficient degree of the structure needed for producers and handlers, while reducing market distortions that result from regulation-induced prices that discriminate against producers, especially in the Upper Midwest region.

As mentioned above, supporters of Option 1B called for certain modifications. The most significant change included the lowering of the Class I differential level for Minneapolis, Minnesota. These commenters offered a $1.08 per hundredweight Class I differential level for this location. They based this recommendation on their own study and survey of prevailing conditions in the Minneapolis area. This proposal is consistent with their view that Class I differential levels should be set at minimum levels. This level included, they said, premiums above the Upper Midwest's order blend price, quantity and quality premiums, and hauling subsidies. From this level, all other differential levels should be set and adjusted.

These commenters also cited the USDSS model's limitation in determining the proper alignment of Class I differential levels, a similar criticism voiced by Option 1A supporters. These commenters are also of the opinion that, due to more than 60 years of Federal regulation, the relative value differences implied in the model results were too much like existing value differences than would be the case in an unregulated market. They indicated that the USDSS model's optimal solution values should be used conservatively as maximums in setting relative geographic differences to the Class I pricing structure. Some commenters suggested that because the model establishes geographic values for all milk uses, a bias results toward higher Class I values relative to manufacturing values in many markets.

Opponents to Option 1B did not like the idea of making the milk order program more market-oriented by reducing Class I differentials in setting Class I milk prices. If this is done, say Option 1B opponents, a cascading series

of events will result that seem not only contrary to why marketing orders exist, but will return the dairy industry to the marketing situations that led to their establishment. Most important, they said, Option 1B would result in, and in fact calls for, the altering of current supply and demand conditions for milk. These commenters are of the opinion that the Department should not act to cause changes in either prices or marketing conditions. Additionally, they are also of the opinion that it was not the intent of Congress to have milk order reform result in either an increase or decrease in returns to dairy farmers.

Opponents of Option 1B were of the opinion that too much reliance was placed on directly applying the USDSS model results as the Class I pricing structure, and that inappropriate reliance was also placed on the role of over-order premiums in achieving a more market-oriented pricing plan for the milk order program. Opponents argued that today's over-order premiums are directly tied to the differential levels and the alignment of Class I prices established under the existing orders. Additionally noted, current and consolidated markets have, and will continue to have, different circumstances that will disproportionately affect the ability of producers to negotiate over-order premiums, especially in those markets where Class I differentials are lowered most from current levels.

Because Option 1B calls for reductions from current differential levels nearly everywhere, they observed, less of a minimum order price is assured to producers. In those markets where minimum order Class I prices are reduced the most, a greater burden is placed on producers and handlers in negotiating actual prices relative to those orders where price levels are not as affected, they said. In other words, noted one commenter, producers in milk-deficit areas would have Class I differentials reduced the most and would be required to be much more market-oriented than producers in milk-surplus area where the differential level is maintained or increased. One commenter noted, that once over-order premiums are established, they can easily collapse because no one has the ability to control or limit milk production or the flow of milk to market. Very small additional volumes of milk to a market can destroy over-order premiums, this commenter added. On the producer side of relying too much on over-order premiums, they said, prices received would be much less equitably shared and uniform, and would tend to force dairy farmers to engage in ruinous price competition in seeking Class I outlets. On the handler side, they noted, order prices will not be high enough to bring forth that mix of local and distant milk supplies to meet Class I needs. Related to this, some commenters noted that the relative differences in prices that would be set under Option 1B would not provide enough of a price difference to cause milk to move from surplus to deficit areas as would be provided in Option 1A. Relying too much on over-order premiums will benefit large handlers to the competitive disadvantage of small handlers, they said. Because actual milk prices paid by handlers would increasingly be determined outside of the order's minimum pricing provisions, they concluded, handlers would be much less assured of the price their competitors are paying for milk.

Conclusion

Milk is a unique agricultural commodity and faces unique marketing circumstances. It is highly perishable, is produced daily and therefore needs to be marketed in a very committed and continuous production-and-marketing cycle. These characteristics, together with the fact that there are many more dairy farmers than milk buyers, presents the opportunity for marketing problems to occur that can be disruptive and destructive to dairy farmers. This sort of marketing situation places producers at a marketing disadvantage relative to handlers, and without some government involvement, equitable terms of trade between these two entities can be difficult to achieve. These unique features of milk and the marketing situation faced by dairy farmers were noted in public comments and are reflected in the legislation authorizing milk marketing orders. Milk marketing orders, using the tools of classified pricing and marketwide pooling, can significantly mitigate the undesirable effects of this marketing situation and still satisfy the public interest by having an adequate supply of milk at reasonable prices.

As noted in public comments, the structure of today's dairy industry, characterized by many dairy farmers and relatively few buyers, is basically the same as it was when the milk order program first began. No dairy farmer, dairy farmer cooperative or bargaining organization can effectively serve to either control milk production or limit the supply of milk to the marketplace to achieve a measure of reasonable price certainty. This can, from time-to-time, be achieved but such instances are generally short-lived and cannot be relied upon for serving the public's interest in having a sustainable, stable and reliable milk supply at reasonable prices.

It is clear from the many public comments received that dairy farmers are largely content with the current way the Federal milk order program has approached Class I milk pricing, both in its structure and the degree to which it is has returned equitable prices to producers and handlers. But some changes are needed to assure that this program remains viable to serve the needs of the dairy industry and the public well into the 21st century.

The need to reform the milk order program is clearly and uniformly recognized by industry participants and the public. To this end, most producers and handler entities are of the opinion that the reform effort should result in limited change in the prices that are established under the orders, and that any changes to the system be governed by a minimum of change in the prices and the terms of trade between producers and handlers. Other producer and handler entities are of the opinion that the ''traditional'' methods of Class I milk pricing are seriously flawed, resulting in a program that has become viewed as economically discriminatory to dairy farmers in certain regions of the country and is institutionally resistant to change. The public too, expects that the program should be operated in a manner that will provide and promote efficiency and offer the potential for a less expensive milk supply.

It is the Class I pricing structure that provides additional revenue above the basic value for milk to producers. Because of this, Class I pricing is often viewed as the cornerstone of the milk order program's pricing policy. This is so because the Class I fluid use of milk commands the highest-valued use in the marketplace and is the preferred outlet for milk by producers. It is also this use of milk that has the greatest effect on determining the location value of all milk and in determining the differences in blend prices that are received by producers.

Because milk value varies by location, it is appropriate, in using a classified pricing plan, to establish Class I prices that reflect these location value differences. Supporters of Option 1A and Option 1B agree this is best accomplished with a system of Class I differentials that properly links and aligns milk value. In evaluating how best to accomplish this, it is also important to recognize the significant changes that have taken place within the dairy industry since the full measure of Class I pricing was last undertaken at a 43-day national hearing in 1990.

Today, and as evidenced in the hearing record of 1990, there was general satisfaction with the way Class I milk pricing was developed and employed in a system of orders that had evolved over nearly 60 years. The record of that hearing evidenced that technological and structural changes were underway, but the record did not contain sufficient evidence for changes at that time. The Upper Midwest region of the country can no longer be considered the single reserve supply of milk that the country can rely upon for a supply of milk to meet fluid needs in deficit areas. In fact, the reform effort has clearly revealed that there are several reserve supply areas, and the Class I pricing structure changes adopted are reflective of this change. Other issues—technological factors, improved assembly and distribution systems allowing for sales competition of ever-larger geographic areas, the growing importance of milk value based on the value of its components—all speak to the need for reforming the Federal order system.

The PR preliminarily narrowed the Class I pricing structure to two options. Both have similarities and differences that have been discussed in detail. The adopted Class I pricing structure will work in conjunction with other reforms to milk order provisions, especially the more transparent product price formulas and the reduced amount of advance notice for Class I and Class II prices. Taken as a whole, the package of reforms retain the features that are desired and needed to achieve the goals of the AMAA articulated by Option 1A supporters while also providing the appropriate changes needed to obtain greater economic efficiency and equity—an objective voiced by supporters of Option 1B. The adopted class I pricing structure will establish Class I milk prices that will result in a sufficient supply of milk for the national system of reformed and consolidated milk orders.

The adopted Class I pricing structure recognizes and addresses the concerns of Option 1A supporters in their view of the limitations of relying on the marketplace in establishing milk prices to producers that are equitable and reasonable given the marketing situation they face. Similarly, the adopted Class I pricing structure recognizes that handlers will be assured a higher degree of minimum price equity. As importantly, the adopted Class I pricing structure provides the necessary structural reform needed in the dairy industry. The adopted structure provides the incentives necessary for increased efficiency in the organization and distribution of the milk supply and dairy products that is not offered by the price structure of Option 1A.

As discussed earlier, it is important and appropriate that the Class I price structure recognize all uses of milk. The classified pricing system of the Federal milk order program will continue to value fluid milk in the highest-priced class. The higher-priced classification encourages all milk to first satisfy Class I needs and the adopted Class I pricing structure accomplishes this. Additionally, it continues to consider the cost of moving milk from an alternate location for Class I use, a consideration important to both Option 1A and Option 1B supporters. This is reflected in its aligned structure, recognizing that in supplying milk for manufactured products, demand for manufactured products influences a market's ability to procure milk for Class I needs. In this way, the adopted Class I pricing structure appropriately considers all uses of milk as a national Class I pricing structure.

Finally, the adopted Class I pricing structure meets the requirements of the AMAA. The broad tenet of the AMAA is to establish and maintain marketing stability and orderly marketing conditions for milk. The Federal milk order program will continue to achieve these goals primarily through classified pricing and marketwide pooling. As to pricing requirements, the AMAA objective to stabilize the marketplace with minimum prices and not set market prices is also achieved. As a national Class I pricing structure, it specifically addresses, and adequately sets, appropriate Class I differential levels that will result in milk prices that are high enough to generate sufficient revenue for producers so that an adequate supply of milk can be maintained while continuing to provide equity to handlers.

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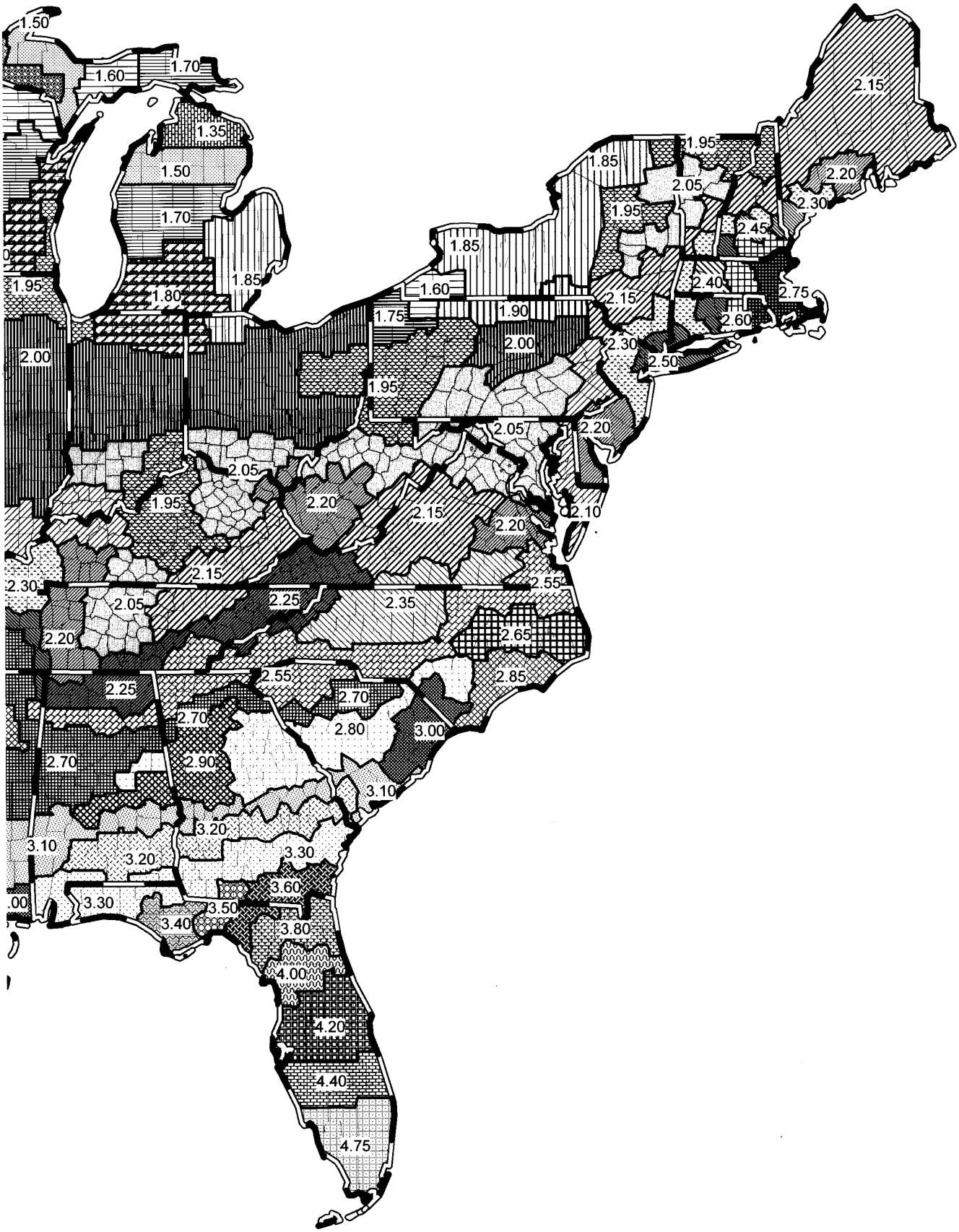
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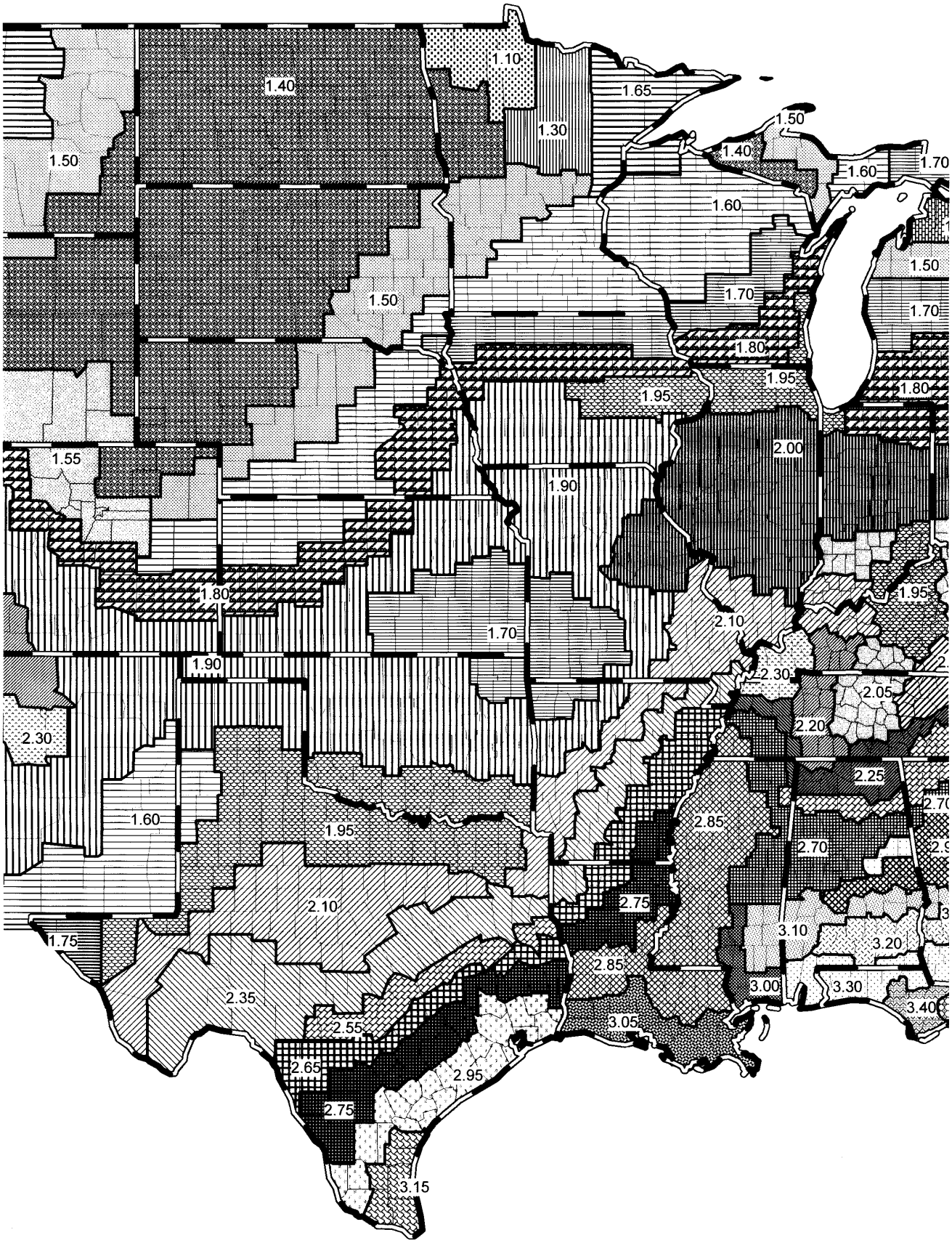
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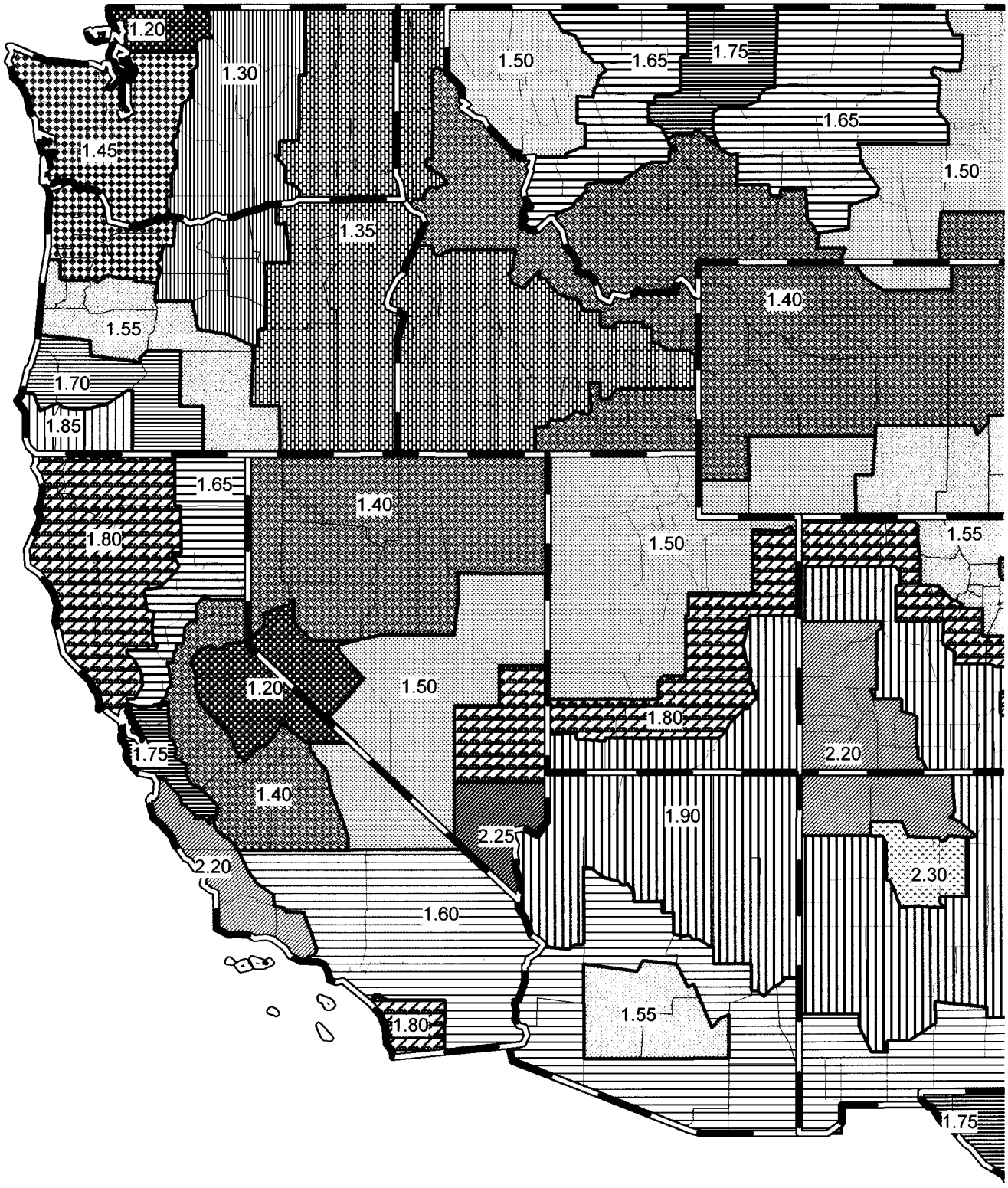

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4. Classification of Milk and Related Issues

The Federal milk order system should continue to contain uniform classification provisions, but with some modification. The proposed modifications are consistent with the Agricultural Marketing Agreement Act of 1937, which requires that milk must be classified ''in accordance with the form in which or the purpose for which it is used.''

The uniform provisions contained in this final decision provide for 4 classes of use. They are similar to the uniform classification provisions contained in the proposed rule, but with some modifications. In particular, cream cheese has been moved from Class II to Class III, and the proposed fluid milk product exclusion for products packaged in ''all-metal, hermetically-sealed containers'' has been changed back to the present standard: ''formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers.''

In addition to these changes, the proposed shrinkage provisions have been revised to more closely resemble the provisions that are now in the orders, and the provision for milk that is dumped or used for animal feed has been added back to the orders, but has been moved from Class III to a new paragraph, § 1000.40(e), which specifies other uses of milk that are to be priced at the ''lowest class price for the month,'' be it I, II, III, or IV. Milk that is lost in an accident, flood, or fire (i.e., § 1000.40(c)(3) in the proposed rule published on January 30, 1998, at 63 FR 4972) has been combined with milk that is dumped or used for animal feed in the new paragraph (e). Finally, the classification for inventory of fluid milk products and fluid cream products in bulk form has been moved from Class III to Class IV.

Changes in the proposed rule that have been carried forward to this final decision include the reclassification of eggnog from Class II to Class I, the formation of a new Class IV which includes milk used to produce butter and any milk product in dried form, and elimination of the term *filled milk* from the orders.

In addition to changes in the class uses of milk, this final decision modifies the definitions of *fluid milk* and *commercial food processing establishment.* Also, this decision contains modified administrative rules related to the classification of milk. These include rules for classifying skim milk and butterfat that is transferred or diverted between plants, general rules pertaining to the classification of producer milk (including the determination of shrinkage and overage), rules describing how to allocate a handler's receipts of skim milk and butterfat to the handler's utilization of such receipts, and provisions concerning the market administrator's reports and announcements concerning classification. The classification and classification-related provisions have been restructured, in part, to standardize and simplify the regulatory program.

Further details concerning these changes are explained in the following discussion.

4a. Fluid Milk Product (§ 1000.15)

The new orders contain a modified *fluid milk product* definition in § 1000.15. The changes to the fluid milk product definition include eliminating the term *filled milk,* including eggnog in the list of specified fluid milk products, and revising the word *buttermilk* to read *cultured buttermilk.* The revised fluid milk product definition reads ''any milk products in fluid or frozen form containing less than 9 percent butterfat and more than 6.5% nonfat milk solids that are intended to be used as beverages. Such products include, but are not limited to, milk, skim milk, lowfat milk, milk drinks, eggnog, and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50% total milk solids), or reconstituted.''

The term ''buttermilk,'' as used in the fluid milk product definition, is changed to read ''cultured buttermilk.'' The revised term clearly distinguishes the ''beverage'' buttermilk product from the buttermilk byproduct which is produced from a continuous churning operation.

The fluid milk product definition also is modified to exclude ''filled milk'' and to include eggnog in its list of products. Although it is apparent that eggnog is a beverage milk product and clearly meets many of the criteria for being considered a fluid milk product, it is not now included in the list of products identified as fluid milk products. The addition of eggnog to the list of fluid milk products results in a change of the product's classification from a Class II product to a Class I product. The elimination of the term ''filled milk'' from the fluid milk product definition is discussed later.

In the proposed rule, certain changes were proposed for section 15(b)(1) of the fluid milk product definition. Currently, this section exempts from the fluid milk product definition ''formulas especially prepared for infant feeding or dietary use that are packaged in hermetically-sealed containers.'' As contained in the proposed rule, this exemption would have applied to ''formulas especially prepared for infant feeding or meal replacement'—without regard to the type of container—and ''any products packaged in all-metal, hermetically-sealed containers.'' These changes were not widely supported and have been dropped because they could result in reclassifying certain fluid milk products from Class I to Class II. The language in this final decision is identical to Section 15(b)(1) of the present orders.

4b. Fluid Cream Product (§ 1000.16)

No change has been made to the *fluid cream product* definition. The current definition is uniform under all the orders and should be used in the newly merged orders. There were no comments supporting a change in this provision.

4c. Filled Milk

The definition of *filled milk* has been eliminated from all milk orders and the term has been removed from the fluid milk product definition and other provisions within the orders. Filled milk is a product that contains a combination of nonmilk fat or oil with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids). Filled milk was first produced and marketed in the 1960s. In 1968, the orders were amended to provide a definition of filled milk. Currently, there is little or no filled milk being produced under Federal orders. The term filled milk is used 18 times in each of the milk orders. It serves little purpose today except to complicate and lengthen the regulatory language. For this reason, any reference to filled milk has been removed from all orders.

The form of filled milk and purpose for which it is used are the same as the form and purpose for which whole milk is used. Filled milk is marketed by handlers in the same types of packages and in the same trade channels as whole milk, and is mainly intended to be used as a beverage substitute for milk. Whether made from vegetable fat and fresh or reconstituted skim milk, or any combination thereof, the resulting product resembles whole milk in appearance. Therefore, any filled milk produced and marketed in the future will be classified as a Class I product under the revised fluid milk product definition.

No letters were received commenting on this change.

4d. Commercial Food Processing Establishment (§ 1000.19)

The definition of *commercial food processing establishment* (CFPE) has been revised by removing the filled milk reference, for the reasons previously discussed, and by removing the word ''bulk'' from the definition. The removal of the word ''bulk'' will allow a CFPE to receive fluid milk products and fluid cream products for Class II use in certain sized packages as well as in bulk.

Presently, the CFPE definition prohibits the receipt of fluid milk products for Class II use in relatively small pre-measured packages that might reduce the CFPE's production costs. While packaged fluid milk products should be permitted to be transferred to a CFPE in any size, only those products that are shipped in larger-than-consumer-sized packages (i.e., larger than one gallon) should be eligible for a Class II classification. If milk is received in gallon containers or smaller, the milk should be priced as Class I milk since there is no way of guaranteeing that such products will not be sold for fluid use. Permitting milk in any sized container to be sold to a CFPE for Class II use if the container had a special label, such as ''for commercial food processing use only,'' was considered, but such a provision would be impractical and it would be prohibitively expensive for a handler to prepare specially labeled products for small accounts. The current restriction barring a CFPE from having any disposition of fluid milk products other than those in consumer-sized packages (one gallon or less) should be retained under the new orders.

These two restrictions are based upon practical considerations. The integrity of the classified pricing system would be much more difficult to maintain if the market administrator were forced to audit every CFPE on a regular basis. By prohibiting the sale of fluid milk products in consumer-sized packages to a CFPE for anything but Class I use, there would be less need to regularly audit CFPE's to be sure that such products are not being sold to the public. Similarly, since packaged fluid milk products in containers larger than one gallon are rarely, if ever, found in retail outlets, it is unlikely that such products will be sold for fluid use. By restricting fluid milk product disposition by CFPE's to packaged products not larger than one gallon in size, there is reasonable assurance that milk priced as Class II will not be disposed of as fluid milk sold by the glass from a bulk dispenser.

There were no comment letters that addressed these recommendations in response to the proposed rule.

4e. Classes of Utilization (§ 1000.40)

Historically, the fluid or beverage uses of milk have been classified in the highest-priced class (Class I), and soft or spoonable products, those from which some of the moisture has been removed, have been classified in the intermediate class of milk (Class II). The final decision issued on February 5, 1993 (58 FR 12634) provided 3 uniform classes of milk for all orders. Classes I and II continued the traditional classification of milk, while the lowest-priced class (Class III) contained the hard, storable products. In a final decision that became effective December 1993, a fourth class—Class III–A (actually a sub-section of Class III)—was established for most orders for milk used to produce nonfat dry milk.

This final decision continues to provide a Class I classification for milk used for fluid and beverage use, with certain exceptions for formulas especially prepared for infant feeding or dietary use in hermetically-sealed containers and products with less than 6.5 percent nonfat milk solids. Soft or spoonable products, most soft cheeses, and milk that is used in the manufacture of other food products or sweetened condensed milk will continue to be classified as Class II. Class III will continue to apply to milk used in hard cheeses, cream cheese, and other spreadable cheese, but will no longer apply to butter. Finally, the new Class IV applies to all skim milk and butterfat used to produce butter or any milk product in dried form. Class IV will also apply to bulk milk that is in inventory at the end of the month.

A new paragraph (e) has been added to § 1000.40 that classifies other uses of milk that are priced at the ''lowest-priced class'' for the month.

Under the pricing formulas proposed for the new orders, it is not certain whether the Class III price or the Class IV price will be the lowest class price for the month. In view of this price uncertainty, a new paragraph has been added to § 1000.40 to guarantee that milk that is lost in an accident, dumped, or used for livestock feed is accounted for at the month's lowest class price.

Comments filed regarding the number of classes of utilization for the proposed merged orders varied from supporters of one class, which would eliminate all manufacturing classes, to supporters of 5 classes of milk. Comments concerning the addition of an export class were also received. However, a large majority of the comments on this issue supported 4 classes of utilization as proposed.

4f. Class I Milk

In this final decision, Class I milk includes all skim milk and butterfat contained in milk products that are intended to be consumed in fluid form as beverages, with certain exceptions. These exceptions include plain or sweetened evaporated or condensed milk, milk that is used in formulas especially prepared for infant feeding or meal replacement if such products are packaged in hermetically-sealed containers, and any product that contains by weight less than 6.5 percent nonfat milk solids.

Under this final decision, eggnog will join lowfat eggnog as a Class I product. Class I products are generally classified on the basis of their fluid form and intended use. Eggnog, a highly seasonal product, is clearly intended to be consumed as a beverage. Since this product is manufactured, packaged and distributed to the consumer as a drinkable beverage, it should be classified as a Class I product. Comments received regarding the reclassification of eggnog were generally in support of its reclassification into Class I, although a few handlers submitted comments opposing this change, arguing that it would increase the cost of eggnog and, therefore, reduce consumer demand for this product.

Class I Used-to-Produce. In order to simplify the accountability for milk products classified as Class I that may contain nonmilk ingredients and/or previously processed and priced skim milk and butterfat, the proposed rule recommended adding a ''used-to-produce'' category to Class I. The proposed rule stated that the used-to-produce accountability method would preclude the need to develop and maintain nonstandard conversion factors and non-milk credits (i.e., salt, flavoring, stabilizers) for milk product accountability and would improve the accuracy of handler reporting and minimize audit corrections without sacrificing any statistical information, pricing considerations, or classification criteria.

Several comment letters were received arguing that the proposed Class I used-to-produce category would not simplify the accounting system but instead would complicate it. No comments were received endorsing this proposal.

Our analysis of the proposed Class I used-to-produce category generally supports those who argued against it. If there were no need to follow a pool

distributing plant's route disposition to its ultimate source to determine under which order the plant would be regulated, it would be possible to simplify accounting by adopting a Class I used-to-produce category. However, with the pooling standards adopted in this final decision, the proposed used-to-produce category would simply require dual accounting with no offsetting benefit. Accordingly, the Class I used-to-produce proposal has been dropped from this final decision.

4g. Class II, III, and IV Milk

The classification of milk used in Class II, III, and IV uses and products is essentially the same as contained in the proposed rule with a few exceptions.

First, cream cheese is moved from Class II to Class III, where it has been for many years.

Second, fluid milk products and bulk fluid cream products in inventory at the end of the month have been moved from Class III to Class IV.

Third, the skim milk equivalent of nonfat solids used to modify a fluid milk product that has not been accounted for in Class I has been moved from Class III to Class IV.

Fourth, the proposed Class II classification for any fluid product in an ''all-metal, hermetically-sealed container'' is changed to what is now in the orders: i.e., ''formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers''.

Finally, the surplus classification for milk that is dumped or used for animal feed is added back to the orders, but, as described earlier, it has been placed in a new paragraph (e) of § 1000.40 which prices milk in the lowest-priced class for the month. For the same reasons cited previously, milk which is lost in a fire, flood, or accident also has been moved from Class III to the ''other uses'' class.

Under the proposed rule, the classification of cream cheese would have been changed from Class III to Class II. The rationale for this change was that the milk used in Class II products is used to process or manufacture products for which handlers know a consumer demand exists and that such products are neither as perishable as fluid products nor perform a balancing function for the market, as do butter, powder, and the hard cheeses.

This proposal was not well received by a large majority of the handlers and producer organizations that commented on it. The International Dairy Foods Association argued that the pricing of milk used for cream cheese under California's state order is below the Federal order Class II or III price and moving cream cheese from Class III to Class II would create a huge competitive disadvantage for milk used in cream cheese under Federal milk orders. The National Milk Producers Federation, Dairy Farmers of America, and numerous individual handlers repeated essentially the same argument.

Some comments addressed the classification of cottage cheese and ricotta cheese, in addition to cream cheese. A national manufacturer of cheese argued that milk used in cottage cheese and ricotta cheese should be reclassified from Class II to Class III. The handler stated that due to falling demand for cottage cheese, it should be placed with other cheeses in Class III. Another cottage cheese manufacturer made the same suggestion. Several comment letters also pointed out that ricotta cheese was priced under California's Class 4–b, giving California processors an advantage over processors making ricotta from milk priced under Federal milk orders. While these comments may have some merit, we believe that more information is needed before these changes can be considered.

Ending inventory of fluid milk products and fluid cream products in bulk form should be moved to Class IV. Since the Class IV price is expected to be the lowest class price in the long run, it is logical to classify ending inventory in Class IV. Also, paragraph (c)(4) of § 1000.40, should be moved from Class III to Class IV. This paragraph prices the skim milk equivalent of nonfat milk solids used to modify a fluid milk product. With the inclusion of a Class IV classification for all products in dried form, the nonfat milk solids used to modify a fluid milk product should be priced as Class IV, together with other dried products, rather than Class III.

Products lost by a handler in a fire, flood, or vehicular accident and products that are dumped or used for animal feed have been moved from Class III to a new paragraph (§ 1000.40(e)) which would price skim milk and butterfat in such uses at the lowest class price for the month. Under the pricing formulas proposed for the new orders, the Class III price or Class IV price is likely to be the lowest class price for the month, but it is possible under some orders that the Class I or II price could be the lowest class price for the month if component values were increasing rapidly. In view of this price uncertainty, a new paragraph has been added to § 1000.40 to guarantee that milk that is lost in an accident, dumped, or used for livestock feed is accounted for at the month's lowest class price.

As previously noted, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers should continue to be classified as Class II products. Although the proposed rule suggested a modification of this exemption, there was insufficient support to move forward with this suggestion. Accordingly, no change was made from the language that is now in the orders.

The treatment of buttermilk should remain unchanged from the proposed rule. No comments were received in opposition to the proposed distinction between buttermilk for drinking purposes and buttermilk for baking purposes. As set forth in the proposed rule, drinking buttermilk would have to be labeled as ''cultured buttermilk'' while buttermilk for baking must contain food starch in excess of 2% of the total solids in the product and the product must be labeled to indicate the food starch content.

The proposal to account for all Class II products on a used-to-produce basis was unopposed. Accordingly, this accounting method, which now applies to all Class II products, except for some fluid cream products, is extended to the remaining Class II products that are currently accounted for on a disposition basis.

As noted above, a large majority of the comment letters supported the 4 classes of utilization as set forth in the proposed rule, including the separate Class IV for butter and milk products in dried form. Therefore, no change has been made to Class IV in this final decision except for the addition of the items already discussed.

Several commenters reiterated requests made prior to the proposed rule to reclassify bulk sweetened condensed milk from Class II to Class IV. The commenters explained that sweetened condensed milk is primarily used in commercial food processing establishments and in the confections industry and that it is interchangeable with powdered milk products and sugar in ingredient markets for processed foods and candy. They argued that manufacturers of sweetened condensed milk are currently at a competitive disadvantage with manufacturers of nonfat dry milk and urged that the 2 products be classified identically. According to one commenter, the Galloway Company, the current system of classification places sweetened condensed milk at a significant disadvantage and has virtually

destroyed the market for sweetened condensed milk.

Hershey Foods Corporation filed a comment letter objecting to the difference in classification for fresh milk used to make chocolate compared to fresh milk used to make powder that is used to make chocolate. Specifically, Hershey argued that the Class II classification for fresh milk used to make chocolate, compared to the Class IV classification for milk used to make powder that is subsequently used in chocolate violates the Act because such milk starts out in the same form and is used for the same purpose.

Hershey explained that whole milk, sugar, cocoa butter, and chocolate liquor are used to make ''chocolate crumb,'' which is further processed to make chocolate. According to Hershey, the chocolate crumb has a moisture content of only 1 percent, which means that if a manufacturer receives fresh whole milk, it must remove 99 percent of the water from it in order for the milk to perform its function in the chocolate. An alternative to starting with whole milk and drying it is to purchase whole milk powder and mix it with the sugar, cocoa butter, and chocolate liquor to make the chocolate crumb.

Hershey argues that maintaining the current disparate classifications for fresh milk used to make chocolate and fresh milk that is first dried and then used to make chocolate, in combination with the proposed 70-cent Class II differential, will pressure manufacturers to change their manufacturing processes and formulas, reduce the use of fresh milk and increase the use of milk powders, reduce milk solids in product formulas, replace milk solids with lower cost alternatives, and might even influence the location of chocolate manufacturing plants. Hershey also notes that the State of California does not discriminate between manufacturers of chocolate, but instead prices all milk used to manufacture chocolate in the same class whether the chocolate manufacturer begins its process with fluid milk, sweetened condensed milk, evaporated milk, nonfat dry milk, or whole milk powder.

Galloway and Hershey conclude that there is no justification for pricing milk used to make sweetened condensed milk or chocolate crumb in a higher class than milk used to produce powdered milk. However, Galloway states, if sweetened condensed milk is kept in a class higher than powder, the differential for that class should be no more than 30 cents per hundredweight.

Bulk sweetened condensed milk/skim milk is used as an intermediate product in ice cream, candy, and other manufactured products. However, these manufactured products can also be made from powdered milk. When powder prices are low relative to the Class II price, there is an economic incentive for powder to be substituted for bulk sweetened condensed milk. As a result, there must be an economic relationship between the Class II price and the cost of using alternative dry or concentrated products to make Class II products. Under current pricing provisions, the Class II price can be excessive relative to using nonfat dry milk since the Class II price is a measure of the value of milk in cheese (the Class III price) plus a differential.

Conceptually, we do not believe that the value of milk used in demand-driven products like chocolate and sweetened condensed milk that is used in food products is the same as milk that is sometimes made into powder for lack of any other use. The major point of the ability to substitute among forms of milk, sweetened condensed milk, and nonfat dry milk in certain uses is that there is a fixed relationship between the Class II and Class IV price. The appropriate price relationship is discussed in the Class II pricing section of this decision.

In the proposed rule, no allowance was provided for dumped milk or milk used for animal feed, and a Class III classification was recommended for milk lost in a fire, flood, or accident. Many handlers and the National Milk Producers Federation objected to the removal of the Class III classification for milk that is dumped or used as animal feed.

On the basis of the comments filed on this issue, a surplus use has been established for milk that is dumped or used as animal feed. The price applicable to such use will be the lowest class price for the month.

4h. Shrinkage and Overage

Shrinkage is experienced by handlers in milk processing operations and in the receipt of farm bulk tank milk at receiving stations and processing plants. Milk is unavoidably lost as it remains in pipe lines, adheres to tanker walls and/or other plant equipment, and is washed away in the cleaning operations. In addition, unexpected losses, including spillage or leaking packages, also contribute to shrinkage.

In the proposed rule, we proposed a pro rata assignment of shrinkage based on a handler's utilization. In other words, each handler's shrinkage would have been classified according to the handler's use of milk that was not lost in transit or processing. We believed that the adoption of such a provision would have simplified both order language and accounting procedures, and we thought that it would be acceptable to handlers because, although in some cases it increased their costs slightly, the change applied equally to everyone.

There were very few comment letters that supported the proposal and an overwhelming number of comments urging us to keep the current provision. Many of the opponents were high Class I utilization handlers who complained that the proposed change would reclassify their shrinkage from Class III to Class I, increasing their costs for this lost milk.

It was not only handlers that disliked the proposed shrinkage provision. Several producer organizations, including Dairy Farmers of America and the National Milk Producers Federation, also voiced their opposition to the proposal. Most of the comment letters urged us to retain the key features of the present shrinkage provision, but there were comments suggesting a simpler provision.

Based on the comments received, this final decision retains, in large part, the present method of calculating shrinkage allowances and pricing shrinkage, but with certain modifications. Just as in the current provisions, there are specified allowances for shrinkage. The major difference is that shrinkage is not automatically assigned to a specified class, as it is now, but rather is assigned to the ''lowest-priced class.'' This change was made to conform with the new 4-class pricing system and, more importantly, to recognize that there is no fixed relationship between class prices because of the different formulas used to compute them. For example, because the formulas for Class III and IV prices are not directly related, it cannot be known in advance which class price will be lowest. Since the relationship between class prices will vary from one month to the next, under the provision adopted here shrinkage may be priced in Class III one month and in Class IV the next. It is necessary to price shrinkage in the lowest-priced class to avoid the situation where a cheese plant, for example, would have to pay more for its shrinkage than it would for milk used in cheese. Such would be the case if shrinkage was always priced in Class IV and the Class IV price exceeded the Class III price. Pricing shrinkage in the lowest-priced class prevents this problem.

As noted, the current shrinkage allowances has been retained in the revised provision. Thus, a pool plant operator would receive a lowest-priced class shrinkage allowance based on 2

percent of the total quantity of milk physically received at the plant directly from producers' farms on the basis of farm weights and tests, plus 1.5 percent of bulk milk received on a basis other than farm weights and tests, and minus 1.5 percent of the quantity of bulk milk transferred to other plants, excluding concentrated milk transferred to another plant for an agreed-upon use other than Class I. A cooperative association handler that delivers milk to pool plants on a basis other than farm weights and tests would receive a shrinkage allowance of .5 percent of the total quantity of milk picked up at producers' farms. Shrinkage in excess of these allowances will be assigned in series starting with Class I to the extent of available utilization.

The shrinkage provision adopted for the new orders contains language to accommodate shrinkage associated with ''concentrated milk.'' Prior to the 1993 classification decision, condensed milk, which is made for use in ice cream and other manufactured products, was not a fluid milk product. Hence, it was not addressed by the shrinkage provision. This changed after the decision, however, when condensed milk became a fluid milk product. In making this change to the fluid milk product definition, certain conforming changes that should have been made in the shrinkage provisions were overlooked. The current proceeding involving all Federal orders has been the first opportunity to rectify this oversight. During the interim period, the unique problem associated with condensed milk has been handled administratively. Thus, the new language added to the shrinkage provision does not represent a change from the way the rules have been administered but merely codifies them.

Some plants receive milk from producers, condense (i.e., concentrate) the milk into a product that contains not more than 50 percent total milk solids, and then transfer this product on an agreed-upon basis to another plant for use in some product other than a fluid milk product (e.g., ice cream). In this case, the first plant should retain the full 2 percent shrinkage allowance because it incurs processing shrinkage in the course of concentrating—i.e., most likely condensing—the milk. The plant purchasing this concentrated (i.e., condensed) milk should get no shrinkage allowance on this milk since the designated use of this milk is for non-fluid use. Accordingly, the value of any shrinkage incurred in further processing this concentrated milk would not be much less than its use value.

As noted elsewhere in this decision, a recent development in milk processing is the use of on-farm filtering equipment (e.g., reverse osmosis or ultra-filtration) to concentrate milk before it is shipped to a plant for use in a variety of milk products. Although this milk falls under the same broad ''concentrated milk'' category as condensed milk, it is actually a very different product which can conceivably be used for fluid use as well as in a manufactured product such as cheese or ice cream. Thus, language is needed in the shrinkage provision to differentiate this type of concentrated milk from condensed milk. We have accommodated these 2 types of concentrated milk by allowing the shipping and receiving handlers to agree on the use of this milk. Accordingly, if a handler receives concentrated milk from another plant by agreement for use in Class II, III, or IV, the receiving handler will get no shrinkage on this milk. If no such agreement is specified, however, the receiving handler will get the 1.5 percent shrinkage allowance, just as would be the case for unconcentrated milk that was received from another plant.

For example, milk may be concentrated at a plant by using reverse osmosis or ultra-filtration techniques and then be transferred to a 2nd plant for use in a fluid milk product. In such case, the milk will not be transferred by agreement for other than Class I use, but instead will be allocated to use at the 2nd plant receiving this concentrated milk. In this instance, it is appropriate to treat this milk just like unconcentrated milk that is received at a plant and then transferred to a 2nd plant. Thus, the first plant will initially get a 2 percent shrinkage allowance for the milk received from producers, but will be required to subtract 1.5 percent from the 2 percent when the milk, even though concentrated, is transferred to the 2nd plant. The 2nd plant will get a shrinkage allowance based on 1.5 percent of the reconstituted volume of the concentrated milk. In other words, for accounting purposes the water that was initially removed from the milk will be added back to the concentrated milk before computing the 1.5 percent shrinkage allowance for the 2nd plant.

In the example above, the concentrated milk will likely be from a farm plant which concentrates its milk before shipping it using either reverse osmosis (RO) or ultra-filtration (UF). As explained in the uniform provision discussion in this final decision, milk from a single farm with RO or UF equipment will be treated as producer milk of the first pool plant receiving this milk. However, when the milk of 2 or more producers is commingled on a farm with RO or UF equipment, that farm will be treated as a plant and the dairy farmer owning or leasing the farm will be the responsible handler for all of the milk processed that month.

The shrinkage provision in this final decision differs from the current shrinkage provisions in one other respect. At the present time, when a manufacturing facility that has absolutely no Class I utilization has ''excess shrinkage'' (i.e., shrinkage that exceeds its 2 percent shrinkage allowance) the excess shrinkage is assigned to Class I even though the plant has no Class I utilization. Thus, the milk that is ''lost'' by the plant is actually priced higher than the milk that is ''used'' by the plant.

Under the proposed provision, such excess shrinkage would be assigned to whatever utilization the plant has, starting with Class I. In the case of a cheese plant that has no utilization other than Class III, the excess shrinkage would be assigned to Class III.

After shrinkage is assigned pursuant to § 1000.43(b) of the proposed orders, it will be added to a handler's reported utilization to arrive at the ''gross utilization in each class.'' The gross utilization in each class will then be carried over to § 1000.44, where it will be used to allocate the handler's receipts to its gross utilization of such receipts.

Overage occurs when the reported utilization of producer milk exceeds the reported quantity of producer milk received. Overage, as well as shrinkage, can occur for a number of reasons but is usually the result of record-keeping and measurement errors.

As set forth in the proposed rule, overage would have been classified by being prorated to a handler's reported utilization. It then would have been subtracted from the handler's reported utilization to arrive at the gross utilization in each class which would have been used to allocate a handler's receipts in § 1000.44.

No comments were received specifically focusing on the proposed treatment of overage, undoubtedly because the proration of overage does not have the same financial impact as the proration of shrinkage. Nevertheless, in conjunction with the change in the treatment of shrinkage, the treatment of overage also should remain the same as it is now in the orders. Accordingly, in this final decision, overage is classified in § 1000.44(a)(11) by subtracting the excess pounds of skim milk and butterfat from each class, beginning with Class IV. This treatment is identical to the way overage is classified under the present orders in section

44(a)(14), except for the fact that now—since there is no Class IV—the allocation begins with Class III.

4i. Classification of Transfers and Diversions (§ 1000.42)

Certain changes have been made to the classification of transfers and diversions section of the orders to simplify and clarify order language. The changes discussed in this final decision are virtually identical to those contained in the proposed rule, except for minor corrections and conforming changes necessitated by other changes in order provisions. There were very few comments pertaining to this section of the proposed rule. Those that were received supported the changes proposed.

At the present time, in many orders if any milk that is diverted from one order to another for requested Class II or III use is assigned to Class I, the dairy farmer who shipped that milk is defined as a producer under the order receiving the milk with respect to that portion of the milk assigned to Class I. In other orders under similar conditions, the dairy farmer becomes a producer on the receiving order for all of the milk diverted even though only a portion of the milk was classified as Class I. When this type of adjustment is necessary, the diverting handler is informed by the market administrator's office that there is not enough Class II or III use remaining in the receiving plant to absorb all of the milk diverted. In such case, the diverting handler may pick which load or loads of diverted milk will become producer milk under the receiving order.

Since the orders are not precisely clear on how inter-order diverted milk should be handled, some modification is needed in the order language. Under most orders, and as provided in this final decision, milk may be diverted from one order to another for a requested use other than Class I. However, if there is not enough Class II, III, or IV utilization in the receiving plant to be assigned to the diverted milk, some milk may have to be assigned to Class I. When this happens, the practical administrative problems involve determining which milk of which dairy farmers and which loads of milk will be shifted as producer milk from one order to another.

Market administrators should be given some flexibility to handle these administrative problems on a market-by-market and case-by-case basis. As a practical matter, most milk diverted between orders is diverted by cooperative associations that reblend proceeds to their members. In most cases, it makes little difference to a cooperative association whether a dairy farmer is a producer on one order or another order; any differences in blend prices between the orders will be washed out in the reblending process. In the case of milk of nonmember producers that is diverted between orders, however, differences could arise in a producer's net proceeds for the month depending upon how much milk was pooled in each order. Therefore, these situations should be handled in such a way as to be least disruptive to individual dairy farmers.

A market administrator does not know until handlers' reports have been received that some portion of milk reported as diverted to another order cannot be absorbed by the amount of non-Class I utilization in the receiving order's plant. In such case, the diverting handler should be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler wishes, it may designate which dairy farmers on the diverted load of milk will be designated as producers under the order physically receiving the milk. As a last resort, the market administrator will prorate the portion of diverted milk among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the diverted milk that is in excess of Class II, III, and IV use has been assigned as producer milk under the receiving order.

A conforming change that should be made in each order relates to milk that is transferred or diverted for Class II or III use. Presently, milk may be transferred or diverted on a requested Class II or III basis. However, with 4 classes of utilization in the new orders, milk could be diverted for requested Class IV use also. Rather than specifying ''Class II, III, or IV,'' however, the orders should simply state ''other than Class I'' to accommodate a system of more than 3 classes. This language is simpler, shorter, and accomplishes the same end.

To simplify and clarify the classification of transfers and diversions of bulk fluid milk products and bulk fluid cream products from a pool plant to a nonpool plant, which are classified by assigning the nonpool plant's utilization to its receipts, the phrase, ''excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month,'' has been added in § 1000.42(d)(2)(i). This language will help to clarify the steps to be followed in verifying the utilization of bulk fluid milk and cream at the nonpool plant. It has been added to ensure administrative consistency and does not represent a change in the application of this provision.

In § 1000.42(d)(2)(vi), the allocation process for bulk fluid milk transferred from pool plants to nonpool plants is modified such that any remaining unassigned receipts of bulk fluid products be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with the lowest class at the nonpool plant. This change returns the order language to the assignment sequence that was adopted in the Uniform Classification Decision of 1974. Receipts from pool plants should not be given preference by assigning such milk to the available Class II use before assigning receipts from dairy farmers who constitute the regular source of milk for such nonpool plant. Generally, milk transferred or diverted from pool plants to nonpool plants is surplus milk and would be used in storable manufactured products, such as nonfat dry milk and butter. By assigning transferred or diverted milk to a nonpool plant's Class II utilization first, the pool plant operator is forced to account for this milk at the Class II price, even though the nonfat dry milk or other surplus product that was made with the milk is of a lesser value. This process will prevent the assignment of receipts at a higher utilization than the actual utilization.

Receipts of bulk fluid cream products at nonpool plants from pool plants and plants regulated under other Federal orders, similarly, will be assigned to the lowest class utilization first. Generally, a plant operator will use its regular source of supply in the highest valued uses before using alternative supplies. Thus, if a nonpool plant receives cream from a pool plant or a plant regulated under another Federal order, it is likely that the regulated plants were trying to dispose of their excess cream. The nonpool plant receiving the cream will most likely use it for manufacturing purposes; therefore, it should be assigned to the lowest class first. The priority given to regular source supplies is recognized and the provision modified to reflect this.

4j. General Classification Rules (§ 1000.43)

For classification purposes, the milk of a cooperative bulk tank handler—i.e., a ''9(c) handler''—that is delivered to a pool plant will be treated as ''producer milk'' of the pool plant operator. This

change will shorten and simplify the allocation section.

The computation and classification of shrinkage and overage have been added to this section. This will eliminate Section 41, the section previously used for this purpose. Also, the last paragraph of Section 43 has been removed because milk for Class IV use now would be classified in Section 44 of the orders.

No comments were received pertaining to this section.

4k. Classification of Producer Milk (§ 1000.44)

A handler may receive milk from a producer, a cooperative association acting as a handler on bulk tank milk, by transfer from another pool plant, or from ''other sources'' such as nonpool plants, partially regulated plants, and plants that are regulated under other orders. Because of this diversity in sources of receipt, it is necessary in a milk order to go through an allocation sequence to determine which source of milk gets priority to a particular class of utilization and to determine how producer milk was used. In some orders, this allocation sequence is done on a system-wide basis; in others, it is done for each plant receiving producer milk.

Section 44 is one of the most complicated and difficult-to-understand sections in a milk order. Consequently, an attempt has been made to simplify and shorten it. Part of this task was made easier by proposed changes to other sections (e.g., elimination of filled milk, elimination of individual handler pools, and modification of the treatment of inter-order transfers and diversions).

All orders are not now uniform in the classification of producer milk. For example, some orders (e.g., Chicago Regional) provide for system allocation while others allocate receipts on a plant-by-plant basis for a multiple plant handler.

Under the consolidated orders, milk will be allocated on a plant-by-plant basis, as modified to reflect other changes proposed herein. The system allocation method that is found in some orders is based upon a set of marketing conditions concerning the locations of handlers' plants and the market's available milk supply in relation to those plants. These provisions were intended to stop abuses that occurred when milk was transferred from one market to another. Rather than permit an inter-order transfer to be assigned at a handler's high Class I utilization plant, while the handler's producer milk was assigned to lower use value at another of its plants, the system allocation provisions assigned the transfers on the basis of the handler's utilization at all plants combined. The objective was to prevent more distant other order milk from being assigned to Class I use at the expense of producers who were located nearer to the city markets and who represented the normal source of supply for the markets' fluid milk needs.

The 11 new orders do not fit within the parameters of the classical model where a major consumption area is surrounded by production areas. The marketing areas proposed for the consolidated orders span several states and have a number of major population centers. They also have pockets of milk production that, in a number of cases, are in higher-priced areas than some of the fluid milk plants within the marketing area. This milk may not be economically available to a fluid milk plant several hundred miles away. In fact, it may be that a plant near the periphery of a multi-state market may find its closest and cheapest source of supply from outside the market rather than from within the marketing area. Accordingly, the system allocation rules are not supported by current marketing conditions. Therefore, all orders have been modified to allocate milk only on a plant-by-plant basis rather than on a system basis.

Another change that has been made in the allocation section concerns the ''98/2'' rule. At the present time, only 98 percent of the packaged fluid milk products transferred between orders is allocated to Class I; the remaining 2 percent is allocated to Class III. This provision, originating from the June 19, 1964, ''compensatory payment'' decision, was adopted to provide an allowance for ''route returns.'' According to that decision, ''it is reasonable to expect some route returns will be associated with inter-market transfers just as there are in connection with milk locally processed in the receiving market . . . a small allowance of 2 percent for such returns, which must fall into surplus use, should be included to avoid such over-assignment in Class I.'' (29 FR 9120).

This final decision classifies route returns based upon the use of such returns. If route returns are used for animal feed, an ''other use'' classification is provided and such milk is priced at the lowest class price for the month. If route returns are used to make another product, such as cottage cheese for example, the milk would be reclassified as Class II. This classification not only applies to packaged products made from producer milk, but also includes packaged products that were received from other plants, distributed on routes, and then returned to the last plant of receipt.

A handler transferring packaged fluid milk products to another handler's plant may incur some lost product en route to the buying handler's plant. In such case, the transferring handler may report such product as route returns and account for the milk used in such product at the lowest class price.

In view of the reclassification for route returns for either handler involved in an inter-order transfer who reports such returns, subject to market administrator verification, it is not necessary to classify interorder transfers of fluid milk products at 98 percent Class I and 2 percent Class III because this rule overcompensates handlers for route returns and unfairly reduces income to producers. For these reasons, the ''98/2'' rule has been eliminated.

In addition to the changes discussed above, Section 44 has been shortened and simplified by removing unnecessary references that serve to confuse the language rather than make it easier to understand. Where possible, simpler language has been used to replace lengthy section references.

No comments were received supporting or opposing these recommendations.

4l. Conforming Changes to Other Sections (§§ ——.14, ——.41, and ——.60).

Paragraph (b) of the other source milk definition has been removed to reflect the fact that all packaged fluid cream products now would be accounted for on a used-to-produce basis. Also, as previously noted, the simpler and shorter treatment for shrinkage shortens the existing shrinkage provision to the point where it is no longer necessary to keep a separate section for it. Therefore, a separate section for shrinkage is eliminated and the revised contents of that section are now incorporated as a new paragraph (b) in § 1000.43. Finally, conforming changes have been made to § ——.60 (Handler's value of milk for computing the uniform price) to reflect the elimination of filled milk from the order, and to reflect changes in references due to other modifications such as the changes in the treatment of shrinkage and overage.

4m. Organic milk

During the development stage of the order reform process, a proposal was received from Horizon Foods to exempt organic milk from pricing and pooling under Federal milk orders.

In 1990, Congress passed, and the President signed into law, the *Organic Food Production Act of 1990* (7 U.S.C.

6501 *et seq.*), establishing the first Federal standards for organic food products. A proposed rule was issued on December 5, 1997, and published in the **Federal Register** on December 16, 1997 (62 FR 65849), to implement the National Organic Program.

Organic dairy products can now be found in many, if not most, major grocery chains in metropolitan areas. The retail price of organic dairy products is well above non-organic products. In addition to carrying organic milk, many supermarkets now also carry organic yogurt, sour cream, butter, and other organic dairy products. All of these products are priced well above their non-organic counterparts.

Processors of organic milk have asked for exemption from Federal regulation. In a May 20, 1997, letter to the Department, Horizon Foods argued that (1) organic milk is a different commodity; (2) the market for organic dairy products is a niche market; and (3) Federal order regulation of organic milk is contrary to the intent of the Organic Foods Production Act because it does not ''facilitate interstate commerce in fresh and processed food that is organically produced.'' Horizon's proposed solution was to exempt organic milk from the producer milk definition if the milk is produced on a certified organic farm and if the broker pays the producer at least 110% of the month's Class I price for such milk.

The proposal to exempt organic milk from Federal order pricing is denied for several reasons. First, contrary to the assertions of Horizon Foods that all organic milk is priced at 110% of the Class I price, regardless of how the milk is used, there is evidence that some organic milk has been pooled and priced as non-organic milk under some orders, including the Chicago Regional and Southern Michigan orders, for example. Second, although the retail price of organic milk is well above non-organic milk, we believe that organic milk competes with the regulated market and, therefore, also must be fully regulated. Third, if Congress wished to exempt organic milk from Federal milk order regulation, they could have done so either in the Organic Foods Production Act or in the 1996 Federal Agricultural Improvement and Reform Act; but they did not. Fourth, there is no indication that all processors of organic milk price their receipts the same way as Horizon Foods. Even if they did, however, the one class/one price system currently used by Horizon could be a temporary phenomenon due to the rapidly expanding market for organic products. The day may come when the organic market becomes saturated and milk in excess of fluid needs must be disposed of at competitive prices. If and when this happens, it is likely that some form of classified pricing will be implemented. Finally, the Act provides for classifying and pricing milk on the basis of its form and use. As a result, different costs that may be associated with producing organic milk or other types of milk are not relevant. For these reasons, it would be inappropriate at this time to exempt organic milk from pooling or to provide any other type of special treatment for it under the guise of Federal order reform.

No comments were filed concerning this issue with the exception of Horizon Foods, which continued to support its proposal.

4n. Allocation of Location Adjustment Credits

A provision that is now common to most orders has not been carried forward to the consolidated orders. This provision, which allocates location adjustment credits that are applied to transfers of bulk fluid milk products between pool plants, is commonly found in Section 52 of most current orders (See, for example, §§ 1001.53(h), 1007.52(b), 1030.52(c), or 1079.52(d)).

Under most orders, intra market shipments of milk between handlers are assigned to Class I use, unless both handlers agree on a lower classification. Milk that is assigned to Class I use is priced at the receiving plant subject to a location adjustment credit that may apply if it is demonstrated that such milk is actually needed for Class I use. If the credit is applied, the milk is priced at the transferring plant. This assignment of location adjustment credits is intended to prevent the use of pool proceeds to pay the hauling cost for the transfer of bulk milk between pool plants when the intended use of the milk is for other than Class I use.

To carry out this concept, the provision typically assigns a pool distributing plant's Class I use first to its milk receipts directly from producers, then to bulk milk received from a cooperative bulk tank handler, then to milk received by diversion from another pool plant, and then to packaged fluid milk products received from other pool plants. The remaining Class I use in the distributing plant is then assigned to bulk milk received by transfer from other pool plants. In some orders, this remaining Class I use is assigned pro rata to all of the pool plants from which bulk milk was obtained. In other orders, the remaining Class I milk is first assigned to pool plants with the same Class I price and then, in sequence, to pool plants with progressively lower Class I prices.

This final decision is based on the premise that Class I milk does not have the same value at every location. For this reason, Class I differentials have been established for each order with location adjustments that result in establishing a unified Class I price structure that applies to every county and city in the contiguous 48 states. Given this approach, it is no longer appropriate to classify a bulk movement of milk as Class I milk in one section of the order and then in another section of the order depart from the principle of pricing such Class I milk at the plant where it was physically received.

In actual practice, a distributing plant does not receive a fixed amount of milk each day of the week. Some days are heavy bottling days when more milk is needed for Class I use. On such days, a distributing plant may not be able to obtain enough local milk to meet its Class I needs and may have to import plant milk from more distant locations. At the end of the month, however, when the allocation of location adjustment credits takes place, it may appear that there was more than enough local milk to meet the distributing plant's fluid needs, even though this was not the case when recapped on a daily basis. Nevertheless, the allocation provision allocates location adjustment credits based on monthly volumes of milk, not daily volumes, so the supply plant could be in a position where it receives no Class I location adjustment credit even though the milk was indeed shipped for Class I use.

Some of the new orders have transportation credit provisions that provide for hauling credits on bulk milk received by transfer from a plant regulated under another Federal order and assigned to Class I use at the receiving plant. To arrive at the classification of such milk, the milk is assigned to the lower of the receiving plant's or the receiving market's Class I utilization. When milk is purchased in this manner, the transportation cost of the milk assigned to Class I is absorbed, for the most part, by the transportation credit that is provided for the handler purchasing the milk without regard to whether milk could have been purchased from a closer source of supply.

Finally, the current application of the provision in question can result in a situation where there is more incentive to receive bulk milk transferred from a plant regulated under another Federal order than from a plant regulated under the same order, whether or not any other transportation credits are

involved. Should this occur, it can result in a transfer of Class I sales to the transferring plant's Federal order market.

For all of the reasons cited above, the allocation of location adjustment credits has been removed from the orders. Several comment letters were received supporting this change; none were received in opposition to it.

5. Provisions Applicable to All Orders

In addition to the terms and conditions of milk orders previously described, there are a number of other provisions common to all milk orders that describe and define those persons and plants affected by the regulatory plan of the program. Different marketing conditions in the consolidated areas, together with institutional factors, do not lend themselves to an entirely uniform set of provisions for all orders. Consequently, in each of the consolidated orders there are provisions that are unique to each order.

This part of the final decision discusses the nature of these common order provisions, their purpose, and whether or not a provision can be uniformly applied to all orders. When a provision does not lend itself to uniform application, it is discussed in subsequent sections of this final rule together with the provisions unique to each of the individual orders.

To the extent that provisions can be uniformly applicable for all of the consolidated orders, they are included in Part 1000, the General Provisions of Federal Milk Marketing Orders which are, by reference, already a part of each milk order. Thus, as provided here, the General Provisions include the definitions of *route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment.* In addition, the General Provisions include the milk classification section of the order, pricing provisions, and some of the provisions relating to payments. These additions to the General Provisions should make milk order provisions more understandable to the general public by removing the differences that now exist and by consolidating uniform provisions in one place. Thus, an interested person would only have to read one ''nonpool plant'' section, for instance, to understand how that term is applied to all orders. By contrast, at the present time, ''nonpool plant'' is defined in every order and there are slight differences in the definition from one order to the next.

No comments to the proposed rule were received with regard to most of the provisions discussed in this section. To the extent that there were comments, they are specifically discussed below. Most of the provisions in the proposed rule are adopted without substantive change. Any substantive changes are specifically discussed below.

The Concept of Pooling Milk Proceeds

All Federal milk orders today, save one, provide for the marketwide pooling of milk proceeds among all producers supplying the market. The one exception to this form of pooling is found in the Michigan Upper Peninsula market, where individual handler pooling has been used.

Marketwide sharing of the classified use value of milk among all producers in a market is one of the most important features of a Federal milk marketing order. It ensures that all producers supplying handlers in a marketing area receive the same uniform price for their milk, regardless of how their milk is used. This method of pooling is widely supported by the dairy industry and has been universally adopted for the 11 consolidated orders.

There were a number of proposals and public comments considered in determining how Federal milk orders should pool milk and which producers should be eligible to have their milk pooled in the consolidated orders. Many of these comments advocated a policy of liberal pooling, thereby allowing the greatest number of dairy farmers to share in the economic benefits that arise from the classified pricing of milk.

A number of comments supported identical pooling provisions in all orders, but others stated that pooling provisions should reflect the unique and prevailing supply and demand conditions in each marketing area. Fundamental to most pooling proposals and comments was the notion that the pooling of producer milk should be *performance-oriented* in meeting the needs of the fluid market. This, of course, is logical since a purpose of the Federal milk order program is to ensure an adequate supply of milk for fluid use.

A suggestion for ''open pooling,'' where milk can be pooled anywhere, has not been adopted, principally because open pooling provides no reasonable assurance that milk will be made available in satisfying the fluid needs of a market. Proposals to create and fund ''stand-by'' pools are similarly rejected for the same reason.

The pooling provisions for the consolidated orders provide a reasonable balance between encouraging handlers to supply milk for fluid use and ensuring orderly marketing by providing a reasonable means for producers within a common marketing area to establish an association with the fluid market. Obviously, matching these goals to the very disparate marketing conditions found in different parts of the country requires customized provisions to meet the needs of each market. For example, in the Florida marketing area, where close to 90 percent of the milk in the pool will be used for fluid use, pooling standards will require a high degree of association with the fluid market and will permit a relatively small amount of milk to be sent to manufacturing plants for use in lower-valued products. In the Upper Midwest market, on the other hand, a relatively small percentage of milk will be needed for fluid use. Accordingly, under the pooling standards for that order smaller amounts of milk will be required to be delivered to fluid milk plants and larger amounts of milk will be permitted to be sent to manufacturing plants for use in storable products such as butter, nonfat dry milk, and hard cheese. The specific pooling provisions adopted for each order are discussed in detail in the sections of this document pertaining to each of the consolidated orders.

Route Disposition

Route disposition is a measure of fluid milk sales in commercial channels. It is defined to mean the amount of milk delivered by a distributing plant to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine), of a fluid milk product in consumer-type packages or dispenser units that is classified as Class I milk.

The route disposition definition adopted here differs from the definition contained in some current orders. Presently, the route disposition definition of several orders makes reference to plant movements of packaged fluid milk products between distributing plants with respect to determining if such transfers should be considered ''route disposition'' of the transferring plant or the receiving plant. As provided here, however, this issue is addressed in section 7(a) of the pool plant section, which essentially treats such transfers as if they were route disposition.

Plant

A *plant* definition is included in all orders to specify what constitutes an operating entity for pricing and regulatory purposes. As provided in

§ 1000.4 of the General Provisions, a *plant* is the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged. This is meant to encompass all departments, including those where milk products are stored, such as a cooler. The plant definition does not include a physically separate facility without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank to another, or a physically separate facility that is used only as a distribution point for storing packaged fluid milk products in transit for route disposition.

To account for regional differences and practices in transporting milk, some of the consolidated orders provide for the use of reload points for transporting bulk milk that do not have stationary storage tanks.

Farm-Separated Milk

With the advent of new technology for on-farm separation of milk into its components, some additional regulatory language has been added to the plant definition to specify who is the responsible handler for the milk or milk components leaving the farm and how these components will be classified and priced. This determination will be based, in part, on whether the farm processing facility is a plant.

Ultrafiltration (UF) is a membrane process that transfers water and low-molecular weight compounds through a membrane while retaining suspended solids, colloids, and large organic molecules. It selectively fractionates some milk solids components and selectively concentrates other solids components of milk.

When a UF membrane is used, water, lactose, uncomplexed minerals and other low-molecular-weight organic compounds pass through the membrane. For example, if unaltered milk containing 3.5 percent fat, 3.1 percent protein, and 4.9 percent lactose is run through a UF membrane until half of the original volume is eliminated, the remaining product not passing through the membrane (i.e., *retentate*) will contain all of the fat and protein but only half of the lactose. The *permeate* (i.e., that part of the original milk that does pass through the membrane) will contain water, lactose, non-protein nitrogen, and about one-sixth of the minerals.

Reverse osmosis (RO) is also a membrane process, but the membranes have much smaller pores than UF membranes, allowing only the water to pass through. The end product essentially is concentrated milk.

At the present time, both reverse osmosis and ultrafiltration systems are being utilized on some farms, principally large farms in the southwestern United States. The product shipped from these farms (i.e., the *retentate*) currently is sent to processing plants for use in manufactured products but it could be used in a range of milk products.

The retentate received from a farm with a UF or RO system will be treated as producer milk at the pool plant at which the milk is physically received or, if the retentate is shipped to a nonpool plant, as producer milk diverted to a nonpool plant. In either case, the milk or milk components will be priced at the pool plant or nonpool plant where the milk is physically received.

To be considered a farm and a producer, as opposed to a plant and a handler, an RO or UF unit must be under the same ownership as the farm on which it is located and only milk from that farm or other farms under the same ownership may be processed through the unit. The producer operating the unit shall be responsible for providing records of the daily weights of the milk going through the unit. Also, the producer must provide samples for each load of milk going through the unit and must furnish the receiving plant with a manifest on each load of retentate showing the scale weight along with samples of the retentate. Finally, the producer operating the RO or UF unit must maintain records of all transactions which must be available to the Market Administrator upon request. If the producer does not meet these recordkeeping and reporting requirements, the unit will be considered to be a plant.

RO and UF retentate will be considered to be producer milk at the plant which receives it. The pounds of RO and UF retentate received will be priced according to the skim-equivalent pounds of such milk. The skim-equivalent pounds for RO retentate will be determined by dividing the solids-not-fat pounds in the retentate by the average producer solids-not-fat in the skim portion of the producer milk used in the product. The butterfat pounds would then be added to this number to arrive at the product skim-equivalent pounds.

In computing the fluid equivalent of UF retentate, the fluid equivalent factor should be computed by dividing the true protein test in the skim milk portion of the retentate by the true protein test in the skim milk portion of the producer milk used in the product. Adding the butterfat pounds to this computation will yield the product equivalent pounds.

In addition to having UF and RO equipment, some farms today may have a separator to separate skim milk from cream before they leave the farm. Rules are also established for this type of operation.

Skim milk and cream going through a farm separator also should be treated as producer milk if received at a pool plant or diverted to a nonpool plant. The producer will be required to obtain scale weights and tests on each load of skim and cream shipped along with samples of each. The same ownership, recordkeeping, sampling and reporting requirements that apply to RO and UF units will also be applicable.

In formulating a policy for the treatment of RO and UF retentate, it is important to recognize that the milk produced on a farm with RO or UF equipment is fully available to meet the needs of the fluid market, either before or after passing through such units. Therefore, there should be no question concerning the propriety of pooling this milk along with other producers' milk.

At this writing, the Food and Drug Administration (FDA) has not yet decided whether UF retentate can be reconstituted and sold as fluid milk. However, FDA has approved the use of UF retentate in certain cheese products on a trial basis. Therefore, before receiving UF retentate for use in any product, handlers should be certain that such use has been approved by the FDA.

Distributing Plant

A *distributing plant* is defined as a plant that is approved by a duly constituted regulatory agency to handle Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants. This definition, and the following supply plant definition, are essentially the same as those found in present orders, except for minor changes made to conform with the pool plant provisions adopted for the consolidated orders.

Supply Plant

A *supply plant* is a regular or reserve supplier of bulk milk for the fluid market that helps to coordinate the supply of milk with the demand for milk in a market. As defined in this decision, a supply plant is a plant approved by a duly constituted regulatory agency for the handling of Grade A milk that receives milk directly from dairy farmers and transfers or diverts fluid milk products to other

plants or manufactures dairy products on its premises.

Pool Plant

The *pool plant* definition of each order describes those plants which receive milk that shares in the marketwide pool. It provides standards to identify those plants engaged in serving the fluid needs of the marketing area. Pool plants serve the fluid market to a degree that warrants their producers sharing in the added value that derives from the classified pricing of milk. While the pool plant definition in every consolidated order provides for a set of common principles, the standards applicable to pool plants differ among the consolidated orders, reflecting the fact that marketing conditions vary across the country. The goal in drafting pooling standards is to ensure both an adequate supply of milk for fluid use and orderly marketing by allowing all milk in a marketing area the opportunity to serve the fluid market and thereby share in the pool.

There are 2 performance standards applicable to *pool distributing plants* in the consolidated orders. The first standard, which varies among orders, requires a distributing plant to have a minimum Class I utilization. Since *route disposition* includes only Class I milk, the specific standard is a measure of a distributing plant's route disposition as a percent of its total receipts of fluid milk products. This standard is generally directly related to the market's Class I utilization. Accordingly, in the higher Class I utilization markets in the Southeast, the overall route disposition standard is 50 percent. In a market such as the Upper Midwest, on the other hand, where Class I utilization will be much lower, the overall route disposition standard is only 15 percent. The specific standards for each consolidated order are discussed in Section 6 of this decision.

One change common to all orders from the proposed rule to this final decision is the substitution of ''total receipts of fluid milk products'' for ''receipts of bulk fluid milk products'' in computing the total and in-area disposition for a distributing plant. This change was made to achieve consistency in accounting for packaged receipts at a distributing plant that are subsequently disposed of as route disposition or transferred to another plant. Since all such disposition will count towards meeting an order's specified pooling standards, receipts of such products from another plant also should be counted as part of the plant's receipts.

Once it is determined that a distributing plant is sufficiently associated with the fluid market to share in the pool, a second standard determines if the plant is sufficiently associated with a particular market to share in the pool applicable to that market. The ''in-area'' standard adopted for the consolidated orders requires that a distributing plant have 25 percent of its route disposition within a marketing area before it can be fully regulated by the order covering that marketing area.

The 15 percent in-area standard in the proposed rule has been changed to 25 percent for all orders to reflect the larger, merged marketing areas that are adopted. This change should not affect the regulatory status of any current distributing plant.

At the present time, some orders describe the in-area route disposition standard as a percent of plant receipts, while in other orders it is described as a percent of route disposition. For the new orders, the in-area standard for all orders is expressed as a percent of total route disposition. This methodology will ensure that the in-area route disposition standard never exceeds the total route disposition standard, a situation that is now possible under the terms of the present Upper Midwest order. For most orders, this change will make little difference and should not result in regulating any plant that is now unregulated.

Under the consolidated orders, a distributing plant that has sales in more than one Federal order marketing area will be regulated, for the most part, under the order in which it has the most sales. There are certain exceptions to this rule, however, particularly in the 3 Southeast orders, where the shifting of plants among markets has created disorderly marketing conditions in recent times. In the Florida, Southeast, and Appalachia orders, a distributing plant that is located within the marketing area and that meets the order's pooling standards will be regulated under that order even though it might have more route disposition in some other marketing area.

When the regulation of a plant does shift from one order to another, the shift will only occur after the plant has had greater sales in such other market for 3 consecutive months. This provision will provide some stability to avoid the frequent shifting of regulation between orders.

To facilitate proper administration and accounting, all orders currently provide that packaged fluid milk products transferred from one handler to another be treated as inter-handler transfers, with each transaction properly identified and specifically reported to affected market administrators. This should continue in the consolidated orders. However, for the single purpose of qualifying a plant as a pool distributing plant, the pool distributing plant definition has been modified to treat transfers of packaged fluid milk products to other plants as if they were route disposition of the transferring plant for the purpose of identifying the plant's association with the fluid market. This is necessary to preclude a plant from becoming partially regulated if the plant shipped significant quantities of packaged fluid milk products to another distributing plant. A conforming change has been made to the distributing plant definition in § 1000.5 to reflect this change.

A special pool distributing plant provision (i.e., Section 7(b) of the consolidated orders) has been adopted for distributing plants that distribute ultra-pasteurized or aseptically-processed fluid milk products. Such plants must be located in the marketing area and must process a certain percentage of their milk receipts into ultra-pasteurized or aseptically-processed fluid milk products during the month. The minimum percentage used for each order in Section 7(b) is equal to the total route disposition percentage required in Section 7(a) of the order for distributing plants processing standard shelf-life fluid milk products. However, unlike the standards for a 7(a) plant, there is no route disposition standard for a 7(b) plant to meet.

Plants specializing in ultra-pasteurized or aseptically-processed fluid milk products tend to have erratic processing and distribution patterns reflecting the long-life nature of the product they process. In some months, they may process fluid milk products but have little or no route disposition because the products are stored in inventory. In addition, these plants often have much wider distribution patterns than do other distributing plants and, under current orders, frequently shift regulation from one order to another. This shifting regulation is disruptive to the producers and/or cooperatives supplying these plants and is an additional regulatory burden to the plant operator.

To provide regulatory stability for these plants, they will be treated as a fully regulated plant if they process a minimum percent of their milk receipts into ultra-pasteurized or aseptically-processed fluid milk products during the month. Having met this standard, which varies among orders, they will not shift regulation to another order simply because they have more route disposition in such other order's

marketing area. In fact, they need not have any route disposition in the order in which they are located to remain regulated. However, if they do not meet the processing standard of the order in which they are located but do meet the 7(a) standards for a distributing plant under one or more other orders, they will become regulated under the order in which they have the most route disposition. If they continue to qualify for pool status on this basis, they may be subject to regulatory shifts depending upon the pattern of their route disposition.

Pool Supply Plant

Performance standards for *pool supply plants* are designed to attract an adequate supply of milk to meet the demands for fluid milk in a market. Pool supply plants move milk to pool distributing plants that service the marketing area.

The pool supply plant definition, like the distributing plant definition, does not lend itself to uniform application in all consolidated orders. Consequently, pool supply plant performance standards should be established according to regional needs. The specific standards adopted in each order are described in section 7(c) of each new order and are explained in more detail in the regional discussions of this document.

In most current orders, a pool supply plant does not include any portion of a plant that is not approved for handling Grade A milk and that is physically separated from a portion of the plant that has such approval. Some inspection agencies render only one type of approval for an operation. To accommodate those areas where split operations are permitted, some of the consolidated orders provide for a physically separated portion of the plant as a ''nonpool plant.''

Pooling Options

Unit Pooling

Unit pooling allows 2 or more plants located in the marketing area and operated by the same handler to qualify for pool status as a *unit* by meeting the total and in-area route disposition standard as if they were a single pool distributing plant. To qualify as a *unit,* at least one of the plants in the *unit*— i.e., the primary plant— must qualify as a pool distributing plant on its own standing and the other plants in the unit must process only Class I or Class II milk products.

Unit pooling serves to accommodate and provide a flexible regulatory approach in addressing the specialization of plant operations. It also minimizes unintended regulatory effects that may cause the uneconomical and inefficient movement of milk for the sole purpose of retaining pool status. However, some conditions need to be satisfied for unit pooling. The ''other'' plant(s) of the pool unit—i.e., the plants that would not qualify for pool status as a single plant—must be located in an equivalent or a lower price zone than the primary pool distributing plant. This condition is required to assure that the transportation of milk for Class II uses will not be subsidized through the marketwide pool and to assure pricing equity to all handlers processing Class II products that do not use unit pooling. Unit pooling status must be requested in writing and approved by the market administrator for its proper implementation and administration.

System Pooling

Supply plants and reserve supply plants provide a benefit to the market because they are required to meet certain performance standards in supplying the needs of the fluid market. They also serve to balance the market. Because handlers often operate more than one supply plant within the market, some of the merged orders allow a single proprietary handler or one or more cooperative associations to combine their plants into systems for the purpose of meeting the order's performance standards for pooling. Under system pooling, 2 or more plants in a system can qualify for pool status by meeting the applicable performance standards in the same manner as a single plant. However, not all plants in a system of supply plants must transfer or divert milk to a distributing plant. In recognition of this fact, the supply plant definition in § 1000.6 has been modified to conform with this provision.

Adjustment of Pooling Standards

The consolidated orders provide the market administrator with authority to adjust shipping standards for supply plants, reserve supply plants, balancing plants, and supply plant units if he/she finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments of milk. A finding by the market administrator that adjustments are warranted would follow an investigation conducted on the market administrator's own initiative or at the request of interested parties. Before making a finding that revisions are warranted, the market administrator would notify interested parties of this possibility and invite data, views, and arguments. If the market administrator determines that a revision is warranted, he/she shall provide written notification to interested parties of such revision at least one day before the revision goes into effect.

This provision allows the market administrator to respond promptly to changes in local marketing conditions and should result in better service to the dairy industry and to the public. The authority given to the market administrator to make needed adjustments in the manner specified is commensurate with the authorities already delegated by the Secretary to the market administrator.

As provided in the proposed rule, the market administrator would have had the authority to adjust pooling standards for distributing plants as well as supply plants. However, such authority has not been provided in any of the current marketing orders except for the Southeast, and in that market it has never been needed. Consequently, it was concluded that any changes that may need to be made to pool distributing plant standards can best be handled through normal amendatory and suspension procedures.

Treatment of Concentrated Milk

An issue related to pooling that should be clarified with the issuance of new orders is the treatment of concentrated milk that is shipped between plants.

Prior to the 1993 classification decision, condensed milk was not defined as a fluid milk product. Accordingly, when condensed milk was shipped from a supply plant to a distributing plant it was not counted as a qualifying shipment for the purpose of determining the pool status of the supply plant. By the same token, when a distributing plant received a shipment of condensed milk from another plant, the condensed milk was excluded from the distributing plant's receipts for the purpose of computing the pool plant status of the distributing plant.

In the 1993 classification decision, condensed milk was redefined as concentrated milk [15] and was included in the fluid milk product definition. An unintended consequence of this change was that certain plants which had never been pool plants before suddenly became pool plants because of their shipments of condensed milk, and

[15] As used in parts 1000 through 1135, the term *concentrated milk* means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids. It may include milk that has been condensed or milk that has been filtered using such methods as reverse osmosis and ultra-filtration. Concentrated milk may be pasteurized and it may be homogenized.

certain distributing plants that had been pool plants suddenly found themselves unable to qualify as pool plants because their receipts of ''fluid milk products'' were enlarged to include their condensed milk receipts. When handlers complained about these unforseen and unexplained changes, it was decided administratively to continue the previous treatment for condensed milk until the orders could be amended.

The consolidated orders should continue this special treatment for condensed milk. Although condensed milk conceivably may be reconstituted for fluid use, as a practical matter this is rarely, if ever, done. Sometimes, condensed milk is used to fortify fluid milk, but for the most part condensed milk is made to be used in ice cream mix or some other manufactured dairy product.

When condensed milk is transferred from the plant of origin to a distributing plant in the same or another order, it is generally transferred, by agreement, for Class II or III use. Using this criteria as a distinguishing feature of this product, the pool supply plant provision of each order should exclude from qualifying shipments to distributing plants ''concentrated milk transferred, by agreement, for other than Class I use.'' By the same token, a distributing plant also should exclude from its receipts, for pooling purposes, ''concentrated milk received, by agreement, for other than Class I use.''

Using this language will preserve the regulatory treatment that has applied to condensed milk for many years. At the same time, however, this language allows flexibility for different treatment in the case of concentrated milk that is not destined for Class II or III use.

In recent years, there has been much greater use of filtering equipment to remove water from milk at the farm. This technology may be used to reduce hauling costs in shipping milk long distances for use as fluid milk products. Although this concentrated milk is not at present being used for fluid use, this situation may change in the future. For this reason, it is reasonable to provide some flexibility in handling this type of product for both shrinkage and pooling purposes. At this point in time, we believe that the best way to provide this flexibility is to allow the handlers involved in making and using this product to decide among themselves how it will be used and reported, knowing ahead of time the shrinkage and pooling implications involved with these decisions. Thus, if concentrated milk is purchased from another plant by agreement for other than Class I use, the buying handler understands that there will be no shrinkage allowance allowed on the milk. The buying handler also knows that the volume of concentrated milk received will not be counted as a plant receipt for the purpose of determining its pool status.

A supply plant shipping concentrated milk for Class II use may or may not wish to be pooled under a Federal order. If the plant wished to be treated as a nonpool plant, concentrated milk could be transferred for Class II or III use by agreement with the receiving handler. In such case, the transfer of concentrated milk would not be counted as a qualifying shipment in meeting the pool supply plant shipping standards and the receipt of concentrated milk at the distributing plant would not be counted as part of the distributing plant's receipts for purposes of computing its total route disposition. Of course, the agreement to transfer milk for a pre-arranged use is contingent upon the receiving distributing plant having sufficient Class II or III utilization to absorb these receipts.

On the other hand, if a supply plant making concentrated milk wished to qualify for pool status, it could simply transfer concentrated milk to a pool distributing plant without specifying its designated use. In such case, the shipment would count as a qualifying shipment for the purpose of meeting the order's pool supply plant shipping requirements provided that the distributing plant receiving the concentrated milk was a pool plant. Since the receipt of concentrated milk would be counted as part of the receiving distributing plant's receipts in determining the distributing plant's pool status under the order, the plant would have to have sufficient Class I sales to maintain its identity with the fluid market. If the distributing plant did not have sufficient Class I use to meet the order's pooling standards, it would not be qualified to have its receipts pooled under the order and, by extension, neither would the supply plant that shipped the concentrated milk to the distributing plant.

This regulatory flexibility for concentrated milk should accommodate varied situations in the consolidated orders. It will follow the historical treatment for condensed milk but, at the same time, it will provide for new uses and treatment for other types of concentrated milk.

Nonpool Plant

A definition is provided in all orders describing plants which receive, process or package milk, but which do not satisfy the standards for being a pool plant. While providing for such a definition may appear redundant, this provision is useful to more clearly define the extent of regulation applicable to plants.

Nonpool plants should include a plant that is fully regulated under another Federal order, a producer-handler plant, a partially regulated distributing plant, an unregulated supply plant, and an exempt plant. The definitions for these nonpool plants are not materially different than those provided in the current orders with the possible exception of an ''exempt plant.''

Certain plants are exempt from regulation under Federal milk orders. These plants fall into 4 categories: (1) Plants that are operated by a governmental agency which have no route disposition in commercial channels; (2) plants operated by a college or university that dispose of fluid milk products only through their own facilities with no route disposition in commercial channels; (3) plants from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; and (4) plants that have route disposition of 150,000 pounds or less during the month. These types of plants have little impact on the regulated market and need not be regulated to ensure the integrity of the regulatory plan.

A number of Federal orders exempt from regulation small distributing plants which, because of their size, do not significantly impact competitive relationships among handlers in the market. The level of route disposition required before an exempt plant becomes regulated varies in the current orders. As adopted for the merged orders, any plant with route disposition during the month of 150,000 pounds or less would be exempt from regulation. This limit reflects the maximum amount of fluid milk products allowed by an exempt plant in any current Federal milk order and ensures that plants currently exempt from regulation will remain exempt.

Many current Federal orders also provide regulatory exemption for a plant operated by a state or Federal governmental agency. For example, some states have dairy farm and plant operations that provide milk for their prison populations. As provided herein, regulatory exemption would be continued under the consolidated orders unless pool plant status is requested.

Regulatory exemption also should apply to colleges, universities, and charitable institutions because these institutions generally handle fluid milk

products internally and have no impact in the mainstream commercial market. However, in the event that these entities distribute fluid milk through commercial channels, route sales by such entities, including government agencies, will be monitored to determine if Federal regulation should apply.

The determination and verification of exempt plant status will, from time to time, necessitate the need for the market administrator to require reports and information deemed appropriate for the sole purpose of making this determination. Such authority is currently provided in orders and should continue.

Handler

Federal milk orders regulate those persons who buy milk from dairy farmers. Such persons are called *handlers* under the order. These persons have a financial responsibility for payments to dairy farmers for milk in accordance with its classified use. They must file reports with the market administrator detailing their receipts and utilization of milk.

The handler definition adopted for the consolidated orders includes the operator of a pool plant, a cooperative association that diverts milk to nonpool plants or delivers milk to pool plants for its account, and the operator of a ''nonpool plant,'' which would encompass a producer-handler, a partially regulated distributing plant, a plant fully regulated under another Federal order, an unregulated supply plant, and an exempt plant.

In addition, ''third party'' organizations that are not otherwise regulated under provisions of an order are included in the handler definition. This category includes any person who engages in the business of receiving milk from any plant for resale and distribution to wholesale and retail outlets, brokers or others who negotiate the purchase or sale of fluid milk products or fluid cream products from or to any plant, and persons who, by purchase or direction, cause the milk of producers to be picked up at the farm and/or moved to a plant. Such intermediaries provide a service to the dairy industry. These persons are not, however, recognized or regulated as entities required to make minimum payments to producers. The expanded marketing chain brought about by such intermediaries has made it increasingly difficult for the market administrator to track the movement of milk from farms to consumers. The revised handler definition enables the market administrator to more readily identify those entities.

Producer-Handler

It has been a long-standing policy to exempt from full regulation many of those entities that operate as both a producer and a handler. Generally, a *producer-handler* is any person who provides satisfactory proof to the market administrator that the care and management of the dairy farm and other resources necessary for own-farm production and the management and operation of the processing plant are the personal enterprise and risk of such person. A primary basis for exempting producer-handlers from the pricing and pooling provisions of a milk order is that these entities are customarily small businesses that operate essentially in a self-sufficient manner. Also, during the history of producer-handler exemption from full regulation there has been no demonstration that such entities have an advantage as either producers or handlers so long as they are responsible for balancing their fluid milk needs and cannot transfer balancing costs, including the cost of disposing of reserve milk supplies, to other market participants.

The current orders have varying producer-handler definitions that address specific marketing conditions and circumstances. For example, they specify different limits on the amount of milk that producer-handlers may purchase and retain their exempt status. Some modifications have been made to the producer-handler provisions in the consolidated orders for standardization. However, no changes have been made that would intentionally regulate a producer-handler that is currently exempt from regulation under their current operating procedures. Because the producer-handler provision is slightly different from one order to the next, the specific details regarding each definition are described in the regional discussions that follow. Any general provision in the proposed rule, such as the phrase ''or acquired for distribution'' in § 1000.44(a)(3)(iv), that would have changed the status of a current producer-handler has been eliminated.

Public comments were received regarding the extent of regulation that should apply to producer-handlers. The majority of public comments supported the status-quo regarding the regulatory treatment of producer-handlers, emphasizing that they should remain exempt from regulation in accordance with current order provisions and that the provisions should be regional in nature so as not to affect or change the current regulatory status of producer-handlers.

One of the public comments received proposed that the exemption of producer-handlers from the regulatory plan of milk orders be eliminated. This proposal is denied. In the legislative actions taken by the Congress to amend the AMAA since 1965, the legislation has consistently and specifically exempted producer-handlers from regulation. The 1996 Farm Bill, unlike previous legislation, did not amend the AMAA and was silent on continuing to preserve the exemption of producer-handlers from regulation. However, past legislative history is replete with the specific intent of Congress to exempt producer-handlers from regulation. If it had been the intent of Congress to remove the exemption, Congress would likely have spoken directly to the issue rather than through omission of language that had, for over 30 years, specifically addressed the regulatory treatment of producer-handlers.

Since producer-handlers are intended to be exempt from most regulation, some means must be provided to determine and to verify producer-handler status. Accordingly, the market administrator is provided with the authority to require reports and other information deemed appropriate to determine that an entity satisfies the requirements for producer-handler status. Such authority is currently provided in the orders and should continue.

Producer

Under all orders, *producers* are dairy farmers that supply the market with milk for fluid use or who are at least capable of doing so if necessary. Producers are eligible to share in the revenue that accrues from marketwide pooling of milk. The producer definitions of the individual orders are described under the regional discussions later in this document. Responding to regional needs, producer definitions will differ by order with respect to the degree of association that a dairy farmer must demonstrate with a market.

A dairy farmer may not be considered a producer under more than one Federal milk order with respect to the same milk. If a dairy farmer's milk is diverted by a handler regulated under one Federal order to a plant regulated under another Federal order, and the milk is allocated at the receiving plant (by request of the diverting handler) to Class II, III or IV, the dairy farmer will maintain producer status in the original order from which milk was diverted.

Since producer-handlers and exempt plants are specifically exempt from Federal order pricing provisions, the term producer should not include a producer-handler as defined in any Federal order. Likewise, the term producer should not apply to any person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant. Some of the new orders (See Orders 1001, 1124, 1131, and 1134) also exclude from producer status a dairy farmer whose milk is received at a nonpool plant as other than producer milk. The reasons for including this provision are explained in the regional discussions describing those orders.

Producer Milk

The *producer milk* definition identifies the milk of producers which is eligible for inclusion in a particular marketwide pool. This definition is specific to each consolidated order, reflecting the fact that marketing conditions differ among regions.

In general, the definition of *producer milk* for all consolidated orders continues to include the milk of a producer which is received at a pool plant or which is received by a cooperative association in its capacity as a handler. Most current orders consider milk to be ''received'' when it is physically unloaded at the plant and the consolidated orders would continue that treatment.

In order to promote the efficient handling of milk, all orders currently allow a handler to move producer milk, within certain specified limits, from a producer's farm to a plant other than the handler's own plant. This is referred to as a ''diversion'' of milk. Under the consolidated orders, the definition of producer milk allows unlimited diversions to other pool plants, thereby providing maximum flexibility in efficiently supplying the fluid market.

Under some orders, unlimited diversions to nonpool plants would also be allowed once a dairy farmer has become associated with a particular order. Under other orders, however, a producer would be required to ''touch base'' at a pool plant one or more times each month and, in addition, aggregate diversion limits may be applied to a handlers' total diversions. The specific touch base and diversion limits are described in the regional discussions pertaining to each order.

Even for orders without any diversion limits, there is a practical limit to how much milk may be diverted from a pool plant because of the pooling standards that must be met. For a pool supply plant, for example, there is a standard computed by dividing the amount of milk shipped to distributing plants by a plant's total receipts. As provided in the orders, ''receipts'' include milk that is physically received at the plant as well as diverted to nonpool plants. This inclusion of diverted milk in a plant's receipts automatically limits the amount of milk that may be diverted by those plants. Thus, the maximum quantity of milk that such plants would be able to divert and still maintain their pool plant status would be 100 percent less the pool plant shipping standards for the month.

This treatment of diverted milk will mitigate the need for suspending order diversion limitations, an action that is quite common in some of the current orders. Unlimited diversions for many of the new orders will allow for maximum efficiency in balancing the market's milk supply. The market administrator's ability to adjust shipping percentages for pool supply plants, pool reserve supply plants, and balancing plants will ensure that an adequate supply of milk is available for the fluid market without the imposition of diversion limits.

While a one-time producer ''touch base'' standard and virtually unlimited diversions are appropriate for most of the consolidated Federal orders, they are not appropriate for certain ''deficit'' markets in the Southeast. For these orders, touch base requirements and diversion limits provide another tool to ensure that an adequate supply of fluid milk is available to meet the markets' needs. The specific standards for these orders are discussed in the regional section of this document.

In order to provide regulatory flexibility and marketing efficiencies, all of the new orders having diversion limits allow the market administrator to increase or decrease these limits on relatively short notice. This provision currently exists in some Federal orders and has proven to be a responsive, efficient, and effective way to deal with rapidly changing marketing conditions.

Cooperative Association

All current orders provide a definition for dairy farmer cooperative associations that market milk on behalf of their dairy farmer members. Providing for a uniform definition of a cooperative association facilitates the administration of the various order provisions as they apply to such producer organizations and recognizes the unique standing granted to dairy farmer cooperatives under the Capper-Volstead Act. Dairy farmer cooperatives are responsible for marketing the majority of the milk supplied to regulated handlers under the Federal order system.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application for such recognition by the cooperative, is qualified as such under the provisions of the Act of Congress of February 18, 1922, as amended, known as the ''Capper-Volstead Act''. Additionally, the new orders continue to require that a cooperative association have full authority in the sale of the milk of its members and that it be engaged in making collective sales or marketings of milk or milk products for its dairy farmer members.

Several current orders provide a definition for a federation of 2 or more cooperative associations. As adopted here, all consolidated orders recognize a federation of cooperatives as satisfying the cooperative definition for the purposes of determining milk payments and pooling. Individual cooperatives of a federation of cooperatives must also meet the criteria as set forth for individual cooperative associations and their federations as incorporated under state laws.

Handler Reports

All current orders require handlers to submit monthly reports detailing the sources and uses of milk and milk products so that market average use values, or blend prices, can be determined and administered. Payroll reports and other reports required by the market administrator are also provided for in the orders. The order language for the consolidated orders is similar to that contained in current orders. The dates when reports are due in the market administrator's office differ slightly by order according to custom and industry practice.

Announcements by the Market Administrator

In the course of administering the order, the market administrator is required to make several announcements each month with respect to classification, class prices and component prices, an ''equivalent price'' when necessary, and various producer prices. As adopted here, these provisions are uniform and are nearly identical to current order provisions, with the exception of section 62 (Announcement of producer prices), which differs to some extent among orders depending on the degree of component pricing used in the order.

Producer-Settlement Fund

In all of the current and consolidated orders, handlers are required to pay minimum class prices for the milk received from producers. These proceeds are blended through the marketwide pool so that producers are returned a uniform, or blend, price for their milk. The mechanism for the equalization of a handler's use value of milk is the *producer-settlement fund*. It is established and administered by the market administrator for each order.

The producer-settlement fund ensures that all handlers are able to return the market blend price to producers whose milk was pooled under the order. Payments into the producer-settlement fund are made each month by handlers whose total classified use value of milk exceeds the value of such milk calculated at the uniform price (or at component prices for those orders with component pricing). Similarly, payments out of the producer-settlement fund are made each month to any handler whose use value is below the value of milk at the uniform price or component prices, as the case may be. The transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price as handlers whose Class I utilization exceeds the market average. This provision is uniform for all consolidated orders.

The consolidated orders vary with respect to dates for payments to the producer-settlement fund, due largely to industry practices and regional preferences. Each consolidated order provides for payment dates, and they are specific for each consolidated order.

In view of the need to make timely payment to handlers from the producer-settlement fund, it is essential that money due the fund be received by the due date. Accordingly, under all of the new orders payment to the producer-settlement fund will be considered made upon receipt by the market administrator.

The new orders specify that payment cannot be received on a nonbusiness day. Therefore, if the due date for a payment, including a payment to or from the producer-settlement fund, falls on a Saturday, Sunday, or national holiday, the payment would not be due until the next business day. This is specified in § 1000.90 of the General Provisions.

Payments to Producers and Cooperative Associations

The AMAA provides that handlers must pay to all producers and producer associations the uniform price. The existing orders generally allow proper deductions authorized by the producer in writing. Proper deductions are those that are unrelated to the minimum value of milk in the transaction between the producer and handler. Producer associations are allowed by the statue to ''reblend'' their payments to their producer members. The Capper Volstead Act and the AMAA make it clear that cooperative associations have a unique role in this regard.

The payment provisions to producers and cooperatives for the consolidated orders vary with respect to payment frequency, timing, and amount. These differences are generally consistent with current order provisions and with industry practices and customs in each of the new marketing areas.

Each of the new orders will require handlers to make at least one partial payment to producers in advance of the announcement of the applicable uniform prices. The Florida order will require 2 partial payments, mirroring the payment schedule now provided in the 3 separate Florida orders.

The amount of the partial payment varies among the new orders, reflecting the anticipated uniform price. Thus, for example, in the Upper Midwest order, the partial payment rate for milk received during the first 15 days of the month will be not less than the lowest announced class price for the preceding month. By comparison, the partial payment for the Florida order for milk received during the first 15 days of the month will be at a rate that is not less than 85 percent of the preceding month's uniform price, adjusted for plant location.

The final payment for milk under the new orders will be required to be made so that it is received by producers no later than 2 days after the required pay-out date of monies from the producer-settlement fund.

Cooperatives will be paid by handlers for bulk milk and skim milk on the terms described for individual producers except that payment will be due one day earlier. Providing for an earlier payment date for cooperative associations is warranted because it will permit the cooperative association the time needed to distribute payments to individual producer members. The cooperative payment language in each of the consolidated orders has been expanded to include bulk milk and skim sold by cooperatives from their pool plants as well as by cooperatives acting as handlers for milk delivered directly from producers' farms.

When bulk milk is received by transfer from a cooperative's pool plant, a minimum payment should be required for such milk just as if it were producer milk received directly from producers' farms. Many, but not all, of the current orders have such a provision.

For Class I bulk milk that is received from a cooperative's pool plant, the minimum Class I price level for such milk should be the price applicable at the location of the receiving handler's plant. In the case of such transfers, it is presumed that milk will move from lower-priced areas to higher-priced areas. Under these circumstances, part of the transportation cost in moving the milk is covered by the difference in the Class I prices at the receiving plant and shipping plant.

Pricing Class I transfers at the receiving plant's location ensures that a handler would not have an incentive to receive more distant plant milk instead of closer milk directly from producers' farms. It also ensures that all similarly-located pool plants will pay the same minimum prices for their receipts regardless of whether the milk comes from another plant or directly from producers. Finally, it ensures that the handler receiving transferred milk pays at least a portion of the transportation cost to move the milk to its plant. Since transportation cost is likely to exceed the difference in prices between the transferor and transferee plants, the difference in cost will have to be made up through over-order premiums.

All of the payment dates are receipt dates. Since payment cannot be received on a non-business day, payment dates that fall on a Saturday, Sunday, or national holiday will be delayed until the next business day. While this has the effect of delaying payment to cooperatives and producers, the delay is offset by the shift from ''date of payment'' to ''date of payment receipt.''

Minimum Payments to Producers

In a proceeding involving the current Carolina, Southeast, Louisville-Lexington-Evansville, and the former Tennessee Valley Federal milk orders (Orders 5, 7, 46, and 11, respectively), a proposal was made to clarify what constitutes a minimum payment to producers. The proposal was recommended by Hunter Farms (Hunter) and Milkco Inc. (Milkco), 2 handlers regulated under the current Carolina order. Under the proposal, a handler (except a cooperative acting in its capacity as a handler pursuant to paragraph 9(b) or 9(c)) may not reduce its obligations to producers or cooperatives by permitting producers or cooperatives to provide services which are the responsibility of the handler. According to the Hunter/Milkco proposal, such services include: (1)

Preparation of producer payroll; (2) conduct of screening tests of tanker loads of milk; and (3) any services for processing or marketing of raw milk or marketing of packaged milk by the handler.

At the May 1996 hearing, representatives of Hunter and Milkco testified that both handlers receive milk from cooperative associations and Piedmont Milk Sales, a marketing agent handling the milk of non-member producers. The Hunter representative explained that due to competitive marketing conditions in the Southeast in late 1994 and early 1995 handlers were able to purchase milk supplies at Federal order minimum prices without any over-order premiums being charged. As a result of the absence of over-order premiums, the representative stated, Hunter received underpayment notices from the market administrator on milk that it had received from Piedmont Milk Sales.

Hunter argued that the problem of what constitutes a minimum payment to producers should be clarified to preclude another underpayment situation should premiums again disappear in the future. If this issue is not resolved, according to Hunter, it will suffer a loss of milk sales and its producers will receive lower prices. Hunter stated that the current policy is discriminatory and unfair and that everyone would benefit from a clarification of the rules defining Federal order minimum prices.

Based on the testimony presented at the public hearing and comments received, the Department issued a final decision on July 16, 1998 (63 FR 39039), denying the Hunter/Milkco proposal. However, the decision stated that this issue should be revisited as part of Federal order reform.

In the proposed rule for Federal order reform, interested parties were invited to comment on this issue. Only one Federal order reform comment, besides Hunter/Milkco's, discussed this issue. This comment letter, filed by the same law firm that represents Hunter/Milkco, expressed sentiments nearly identical to those that have been expressed by Hunter/Milkco.

Based on our review of these comments, we continue to believe that incorporation of Hunter/Milkco's proposed language in the consolidated Federal orders will not necessarily solve the handler equity problem but could create a host of additional problems. For the reasons stated in the aforementioned final decision, the proposal is again denied for the consolidated orders.

Payment Obligation of a Partially Regulated Distributing Plant

All current and consolidated orders provide a method for determining the payment obligations due to producers by handlers that operate plants which are not fully regulated under any Federal order. These unregulated handlers are not required under the scope of Federal milk order regulation to account to dairy farmers for their milk at classified prices or to return a minimum uniform price to producers who have supplied the handler with milk. However, such handlers may sell fluid milk on routes in a regulated area in competition with handlers who are fully regulated. Therefore, the regulatory plan of Federal milk orders provides a minimum degree of regulation to all handlers who have routes sales in a regulated marketing area. This is necessary so that classified pricing and pooling provisions of an order can be maintained. It is also necessary so that orderly marketing conditions can be assured with respect to handlers being charged the classified value under an order for the milk they purchase from dairy farmers. Without this provision, milk prices in an order would not be uniform among handlers competing for sales in the marketing area, a milk pricing requirement of the AMAA.

There are 3 regulatory options available to a partially regulated handler. First, the handler can purchase Class I milk that is priced under a Federal order in an amount equal to, or in excess of, quantities sold in the marketing area. Second, a payment may be made by the partially regulated handler into the producer-settlement fund of the regulated market at a rate equal to the difference between the Class I price and the uniform price of the regulated market. Finally, the operator of a partially regulated plant can demonstrate that the payment for its total supply of milk received from dairy farmers was equal to the amount which the partially regulated plant would have been required to pay if the plant had been fully regulated. This amount may be paid entirely to the dairy farmers that supplied the handler or in part to those dairy farmers with the balance paid into the producer-settlement fund of the regulated market.

The regulatory options described above and the payment option for reconstituted milk have worked well in the current orders and are continued uniformly in § 1000.76 for the consolidated orders.

Adjustment of Accounts

All current orders provide for the market administrator to adjust, based on verification of a handler's reports, books, records, or accounts, any amount due to or from the market administrator, or to a producer or a cooperative association. This provision is continued in the consolidated orders. The provision requires the market administrator to provide prompt notification to a handler of any amount so due and requires payment adjustment to be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

Charges on Overdue Accounts

All current orders provide for an additional charge to handlers who fail to make required payments to the producer-settlement fund when due. Such payments include payments to the producer-settlement fund, payments to producers and cooperative associations, payments by a partially regulated distributing plant, assessments for order administration and marketing service, and certain other payment obligations in orders with specialized provisions such as transportation credits. This should continue to be provided for in the consolidated orders.

In order to discourage late payments, a 1.0 percent charge per month is incorporated in the consolidated orders. This rate represents the mid-point in the range of charges by all orders presently. Overdue charges shall begin the day following the date an obligation was due. Any remaining amount due will be increased at the rate of 1.0 percent on the corresponding day of each month until the obligation is paid in full.

All overdue charges would accrue to the administrative assessment fund. The late-payment charge is to be a penalty that is meant to induce compliance with the payment terms of the order. If late-payment charges for monies due on producer milk were to accrue to the balance owed to either producers, cooperatives or producers/cooperatives via the producer-settlement fund, it could result in such producers and cooperatives being less concerned whether they are paid on time. By placing late-payment charges in the administrative fund, however, cooperatives and producers would not be placed in a position where they would prefer to be paid several days late so that they would receive the late-payment charges (or increase the level of producer prices due to late payment fee accrual to the producer-settlement fund). This is of particular concern in

markets with a single dominant cooperative. Additionally, by having late-payment fees accrue to the administrative fund, monies are made available to enforce late-payment provisions that would otherwise have to be generated through handlers' administrative assessments.

Assessment for Order Administration

The AMAA provides that the cost of order administration shall be financed by an assessment on handlers. Under the consolidated orders, a maximum rate of 5 cents per hundredweight is provided. This assessment would apply to all of a handler's receipts pooled under the order.

Deduction for Marketing Services

As in most current orders, the consolidated orders provide for the furnishing of marketing services to producers for whom cooperative associations do not perform services. Such services include providing market information and establishing or verifying weights, samples, and tests of milk received from such producers. In accordance with the Act, a marketing services provision must benefit all nonmember producers under the order.

The market administrator may contract with a qualified agent, including a cooperative association, to provide such services. The cost of such services should be borne by the producers for whom the services are provided. Accordingly, each handler will be required to deduct a maximum of 7 cents per hundredweight from amounts due each producer for whom a cooperative association is not providing such services. All amounts deducted must be paid to the market administrator not later than the due date for payments to the producer-settlement fund.

6a. Northeast Region

The Northeast Marketing Area

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

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

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

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

Plant

The plant definition for the consolidated Northeast order should differ from that of the other consolidated orders by allowing stationary storage tanks to be used as reload points. This exception to the plant definition is warranted for the consolidated Northeast order due to certain unique conditions that affect the ability of handlers and haulers to assemble milk in an efficient manner and subsequently transport it to a plant that actually processes milk into finished dairy products, including fluid milk products. This exception would not consider the reload point or facility as a point from which to price producer milk. Rather, milk once assembled would be shipped to a processing plant where it would be priced.

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

Pool Plant

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

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

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

consolidation of the three northeast marketing areas into a single new order.

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

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

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

Producer-Handler

The producer-handler definition for the consolidated Northeast order limits receipts to no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. While the proposed rule addressed significant limitations on producer-handlers with respect to how it distributes their milk, this decision removes such limitations. The intent of providing an appropriate producer-handler definition was to cause no change in the regulatory status of any known producer-handler currently in operation in the Northeast order region. However, the three orders being consolidated have significant differences in the extent of control a producer-handler must retain over its distribution practices. The current Middle Atlantic region does not limit the distribution facilities that may be used by a producer-handler. Thus, any limitation with respect to distribution could either cause a current producer-handler to loose such status, or may cause the need for a producer-handler to modify its business practices. Therefore, the producer-handler definition adopted herein removes any restrictions on how it distributes its products.

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

Producer

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

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

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

Producer Milk

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

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

Component Pricing

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

In response to the proposed rule, one major association representing primarily milk processors and dairy product manufacturers in New York expressed opposition to employing a multiple component pricing plan in the Northeast order. Their objection to its adoption is that it will be burdensome for handlers. This was expressed primarily as burdens associated with changing from farm-point pricing to plant-point pricing of milk and changes that handlers would need to make for producer pay-roll purposes and in the

accounting software that they contend would entail considerable cost outlays. Also expressed in opposition to its adoption was that multiple component pricing does not favor fluid milk handlers, that it is designed primarily for high-solids producers and manufacturers, that it may result in manufacturers having to pay premiums to attract high-solids milk, and that it rewards some producers while reducing pay prices to others.

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

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

Farm-Point vs. Plant Point Pricing

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

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

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

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

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

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

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

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

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

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

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

The 1961 decision that established farm-point pricing provided eight scenarios that demonstrated how handlers behaved so as to minimize

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

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

A proposal that would have allowed a tank truck service charge authorized by the producer but not in excess of 20 cents per hundredweight (cwt.), and establish that payments to cooperatives which serve as handlers operating a bulk tank unit should be at the price reflecting transportation and (the then existing) direct delivery differential applicable at the handler's plant where milk is delivered by the cooperative was not incorporated into the order. At that time, it was found that plant hauling charges averaged nearly 20 cents per cwt. This was offered as rationale for a negotiable 20 cent per cwt. charge by handlers for hauling. Arguments not withstanding, the underlying concepts embodied in farm-point pricing caused the Department to not allow for any hauling deduction by handlers.

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

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

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

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

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

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

per cwt. for each 10-mile zone within the 201–210 mile zone.

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

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

By 1981, bulk tank milk accounted for nearly the entire milk supply pooled on Order 2—about 99.6 percent. As the result of a hearing held in June 1980, in the final decision (FR 46 33008, June 25, 1981) the Secretary again amended the transportation credit provisions of the order. The 15 cents per cwt credit for handlers was retained; however, the 15-cent negotiable transportation service charge was modified to allow handlers to negotiate with producers for any farm-to-first plant hauling cost in excess of the 15-cent transportation credit, plus ''the amount that the class use value of the milk at the location of the plant of first receipt was in excess of its class use value at the location where milk was received in the bulk tank unit from which the milk was transferred.'' According to the 1981 decision, this amendment would adjust hauling allowances for handlers to more closely relate the location value of milk to the costs incurred in transporting milk from farms and country plants to distributing plants in the major consumption areas of the market. Additionally, the decision indicated that this change was necessary to reflect current marketing conditions and permit a more equitable competitive situation for regulated handlers, both on an intra market and inter market basis. The decision also applied a 15-cent direct delivery differential for bulk tank milk received at plants within 70 miles of New York City on the basis that a direct delivery differential is applicable to milk received in cans at a plant in the 1–70 mile zone.

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

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

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

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

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

The arguments for retaining farm-point pricing are not persuasive in light of the detailed discussion on the entire life-cycle of its history discussed above. This is not to discount the importance of the certain desirable features of farm-point pricing that led to its adoption and that have been articulated over the

years for its retention in the New York-New Jersey marketing area. Nevertheless, farm-point pricing has outlived its intended purpose and the Secretary determines that it will not be retained in a consolidated Northeast order.

The Need for a Producer-Price Mechanism

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

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

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

With respect to a producer differential surface, the ADCNE proposed that a debit of 5 cents per cwt. be made to the blend price applicable at non-distributing plants in certain zones. The need for the debit, according to the ADCNE proposal, is to make deliveries to distributing plants somewhat more attractive to producers, while decreasing the amount by which manufacturing plants draw on the marketwide pool for transportation values, offering also that such a debit is economically justified and authorized by the AMAA. According to ADCNE, it is distributing plants that provide the revenue—in the form of Class I values—which form the blend price paid to producers. Deliveries to manufacturing plants do not contribute to increasing the value to the marketwide pool. The debit, according to ADCNE, is a reflection in part of the Order 2 system, which has priced some 50 percent of the milk in the northeast region, and which does not provide location-based transportation payments for movements from farms to manufacturing plants. The ADCNE proposal provides that deliveries to Class I plants are rewarded under this system with an additional 5-cent payment from the pool for the marketwide benefit conferred by a distributing plant's utilization.

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

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

Additional supporting and amplifying comments were also provided by Dairylea. These comments supported the major themes offered in the ADCNE proposal for a producer differential overlay to Class I differential levels. Dairylea stated that moving directly to a plant-point pricing method would accentuate ''existing inequities and market dysfunctions.'' Dairylea further commented that a plant-point differential schedule would maintain current inter-plant price differences in the current New England and Middle Atlantic orders, but would worsen them for New York manufacturing plants, many of which are cooperatively owned. Their view of the ADCNE pricing proposal was that it maintains economic incentives for milk to move to Class I distributing plants, would provide for more balanced procurement equity among competing manufacturing plants, maintains equitable producer pricing when milk is marketed by transporting it from a higher priced zone to a lower priced zone, and provides a structure that allows for adequate blend price levels in all areas of the Northeast milkshed.

Dairylea further commented that under plant-point pricing, existing ''near-in'' manufacturing plants (plants located in a relatively high differential location) would enjoy a procurement advantage relative to their competitors that are located in a lower-priced location. Dairylea recommended narrowing the price differences between manufacturing plants that compete for producer milk. To do this, Dairylea supported lowering producer differentials for manufacturing plants

that are located in high-valued locations and increasing those differentials at manufacturing plants in areas that have lower location values. Dairylea advocated the ADCNE proposal for a producer differential that is 5 cents lower than those of Class I plants when such plants are located in the same pricing zones. Dairylea's view of this design results in maintaining, or slightly increasing, producer differentials applicable at Class I plants and reducing those applicable at ''near-in'' manufacturing plants. At the same time, this would provide for increasing producer differentials at manufacturing plants in central, western, and northern New York. According to Dairylea, this producer pricing surface would present a more equitable marketing environment than strict plant-point pricing currently employed in Orders 1 and 4, while at the same time not threatening the viability of manufacturing plants in those areas of a consolidated Northeast marketing area.

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

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

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

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

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

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

Lastly, in their opposition to the ADCNE proposal, Agri-Mark noted that no manufacturing plant has been built in any city zone for decades, noting that the only significant plants in such areas for the northeast are older plants producing nonfat dry milk and butter and which serve to balance the Class I needs of city markets, concluding that such plants are there for common sense and efficiency reasons. In support of this observation, Agri-Mark noted that existing Class I differentials have not been adjusted to more fully account for increases in hauling costs.

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

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

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

Marketwide Service Payments

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

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

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

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

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

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

Handlers that incur the costs would be those handlers that would receive partial cost reimbursement of 4 cents per cwt. Cooperatives would be eligible to form common marketing agencies or federations for purposes of qualifying for balancing payments. Such handlers would include those who: (1) Demonstrate ownership or operation of a balancing plant with the capacity to process a million pounds of milk per day into storable products such as cheese, butter, and nonfat dry milk and who also represent at least 2.5 percent of the total volume of milk pooled under the order; (2) have under contract, and the obligation to pool on a year-round basis, at least 8 percent of the market's milk volume; (3) own a balancing plant that must be made available to other handlers or cooperatives at the request of the market administrator; (4) qualify to provide pool producers with a temporary market for their milk for up to 30 days at the request of the market administrator; and (5) demonstrate to the market administrator that their utilization of milk in Class I uses is greater than the minimum shipments required for pool plant qualification under the order.

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

The modified proposal would provide balancing payments to any handler in any month in which the handler's deliveries of milk to distributing plants are greater than 20 percent but less than 65 percent of its total pooled milk volume. According to ADCNE, the lower percentage requires handlers to maintain a constant, significant association with the Class I market and is higher than the level required by other handlers for pooling qualification. Additionally, the 65 percent, says ADCNE, serves to limit participation to handlers with substantial quantities of reserve milk not dedicated to the Class I market. Qualifying deliveries would be determined on a ''net shipment'' basis to prevent the reshipment of milk

deliveries that would otherwise qualify for balancing payments. Payment would be made on the reserve volumes of milk. In the event that the market administrator issues a ''call'' for additional milk deliveries to distributing plants, the volume of milk delivered to non-distributing plants in the prior month by handlers subject to the call would be used as a basis for requiring handlers to make additional shipments to distributing plants on a pro-rata basis. For example, if participating handlers in the prior month had delivered 100 million pounds of milk to non-distributing plants and the market needed 10 million pounds of milk delivered to distributing plants, each handler subject to the call would be obligated to deliver an additional volume of milk to distributing plants equal to 10 percent of its deliveries to non-distributing plants in the prior month. ADCNE viewed their balancing payment provision as establishing a ''standby pool'' of milk among qualifying handlers who elect to participate. Participation in the pool would entitle the qualified handler to a payment of 6 cents per hundredweight, determined monthly, on the handler's deliveries to manufacturing plants, but would also obligate the handler to deliver additional quantities in the event of a ''call'' for up to one year after a balancing payment has been received.

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

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

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

Other public comments similarly articulated the uniqueness of the current New York market and its role as part of the consolidated Northeast marketing area. One commenter observed that the Northeast marketing area, and New York in particular, is unique in terms of the mix of producers who are represented by cooperative membership and those that are not. According to this commenter, about 65 percent of the producers in New York are represented by cooperatives, while the remaining 35 percent are independent producers to the market. Further, noted this commenter, it has been cooperatives that have, since the 1960's, taken over the role of balancing the Class I needs of the market by moving milk around on a daily basis between distributing and manufacturing plants. According to this commenter, such was and should continue to be an important factor to consider for the larger consolidated market that expects to need about two thirds of its milk supply balanced between an expected 45 percent Class I and about 20 percent Class II utilization. This commenter was of the opinion that markets characterized by very high cooperative membership already spread the costs of balancing uniformly over a large pool of producers.

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

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

The revised criteria presented by the ADCNE seem reasonable in determining which handlers would be eligible to receive balancing payments from the marketwide pool. The qualification standards for receiving balancing payments (to any handler that ships at least 20 percent, but less than 65 percent of the total volume of milk pooled on the market to distributing plants) also seems reasonable in light of the order's pooling standards. Further, determining qualifying shipments on a ''net shipment'' basis is similarly a prudent safeguard to reasonably assure that milk is delivered into, and not shipped back out of distributing plants and supply plants for the sole purpose of qualifying for balancing payments. It also provides for ensuring a temporary market (up to 31 days) to any producers who would have lost their normal market outlet as a condition for eligibility in receiving balancing payments.

However, the revised proposal would have payments made only on milk used in manufacturing products. In practice this would mean that handlers with the greatest volume of milk going to manufacturing plants would receive a larger share of balancing payments while at the same time would be required to provide the least additional Class I milk to the market. Observed

another way, the less commitment a handler has to the Class I market, the larger the balancing payments. Additionally, basing balancing payments criteria on only manufacturing milk seems to provide a disincentive to handlers in serving the Class I market needs because handlers that would provide additional Class I milk would lose 6 cents per cwt. Lastly, basing balancing payments on just manufacturing milk seems to provide an unwarranted monetary incentive to cause additional milk to associate with the marketwide pool for the sole purpose of receiving an additional 6 cents per cwt.

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

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

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

The ''Pass-Through'' Provision

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

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

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

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

Seasonal Adjustments to the Class III and Class IV Prices

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

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

By the mid-1970's, the M–W was adopted to replace the U.S. Average Price Series and the seasonal adjustors

were retained. The reason for retaining these adjustments were to encourage handlers to make more milk readily available for fluid use in the short production months and to facilitate the orderly disposition of excess reserve milk supplies in flush production months. Although some regional price disparity was acknowledged to result from retaining these adjustments, they were nevertheless retained because there was no evidence that providing for such adjustment had led to any interregional problems in the marketing of the reserve milk supply.

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

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

6b. Southeast Region

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

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

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

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

Transportation credits. As a result of the need to import milk to the Southeast from many areas outside the Southeast during certain months of the year, transportation credit provisions were incorporated in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville orders in August 1996. These provisions provide credits to handlers who incur additional costs to import supplemental milk for fluid use for markets during the short production months of July through December. The provisions restrict the use of credits by handlers to milk received from producers and plants located outside of the marketing areas. The credits are also restricted to milk received from producers who supply the markets only during the short season and are not applicable to milk of producers who supply the market throughout the year.

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

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

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

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

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

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

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

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

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

The other change that has been made to the transportation credit provisions has to do with the computation of the credit with respect to milk shipped directly from producers' farms. At present, the market administrator must determine an origination point for this milk and once the point is determined ascertain what the Class I differential, adjusted for location, would be at that point. If the origination point is within a Federal order marketing area, the applicable Class I differential is the one that would apply at the origination point under the order regulating that area. However, if the origination point is in an unregulated county, a Class I differential, adjusted for location, is computed based upon the provisions of the order receiving the milk (i.e., at present Order 5, 7, or 46).

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

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

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

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

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

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

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

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

At the present time, the Carolina order has a 15 percent in-area route disposition standard, while the

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

Paragraph (b) of section 7 will accommodate the pooling of plants that specialize in extended shelf-life fluid milk products (i.e., 60–90 days) requiring refrigeration. There are at least 3 such plants in the southeast markets: the Ryan Foods Company plants in Jacksonville, Florida, and Murray, Kentucky, and the Dasi Products plant in Decatur, Alabama.

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

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

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

A balancing plant may qualify for pool plant status based upon shipments directly from producers' farms as well as shipments from the plant. To qualify as a balancing plant, the plant must be located within the order's marketing area. This requirement ensures that milk pooled through the balancing plant is economically available to processors of fluid milk if needed. However, in the case of the Appalachian order only, a balancing plant also may be located in the State of Virginia. This provision has been in the Carolina order and should be continued in the Appalachian order. The performance standards for a balancing plant require that 60 percent of a cooperative's producer receipts be delivered to pool distributing plants every month of the year. This provision is identical under the 3 southeast orders.

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

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

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

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

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

The cooperative balancing plant provision is intended to allow cooperatives to supply the fluid market in the most efficient manner possible and also to process milk efficiently when such milk is not needed for fluid use. In the Southeast region, the dominant cooperative operates butter-powder plants in Kentucky and Louisiana and one cheese plant in Tennessee. Oftentimes during the year, these plants are completely idle when all available milk is needed for Class I and II use.

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

It is not necessary to seasonally adjust the supply plant and balancing plant shipping requirements for the 3 southeast orders because the standards proposed are flexible enough to accommodate the disposal of surplus milk during the flush production season. In addition, each of the 3 orders contains a provision to allow the market

administrator to increase or decrease shipping requirements and other pooling standards by up to 10 percentage points. This provision also is included in the producer milk section of all 3 orders with respect to the percentage of milk that may be diverted and in the number of days that a producer's milk must be received at a pool plant.

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

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

In the case of a distributing plant that is not located within any order's marketing area, a different standard should apply. Since, in this case, it cannot be presumed with certainty that a plant is most closely associated with the market in which it is located, its association with a market should be determined based upon where it has the most sales.

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

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

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

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

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

The diversion limits that are specified in the producer milk section of the new orders are slightly different among the 3 southeast orders. To qualify for diversion to a nonpool plant, a minimum amount of a producer's milk must be received at a pool plant during the month (i.e., this is called a ''touch-base'' requirement). Under the Appalachian order, 6 days'' production must be received at a pool plant during each of the months of July through December, and 2 days' production must be received at a pool plant during each of the other months of the year. Under the Southeast order, 10 days' production is required to be delivered to a pool plant during each of the months of July through December to qualify a producer's milk for diversion to a nonpool plant. During the months of January through June, 4 days' production is be required to be delivered to a pool plant.

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

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

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

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

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

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

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

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

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

6c. Midwest Region

Upper Midwest Order

Pool Plant

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

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

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

The Identical Provisions Committee recommended that the in-area distribution criteria for pool distributing plants be 15 percent of total route disposition, and that percentage was included in the proposed rule. However, it was determined that a 25-percent standard for in-area sales would be appropriate for all markets to assure that handlers not already regulated would not become regulated solely because of order consolidation. The Committee explained that use of total route disposition rather than bulk receipts as the denominator would reduce opportunities for handlers to manipulate the manner in which they may report their operations to avoid regulation. Currently in the Chicago Regional and Upper Midwest orders the in-area route disposition standard (10 percent in Chicago Regional and 15 percent in Upper Midwest) is computed using the same basis (bulk receipts, including diversions) as is used to determine whether a plant meets the definition of a pool distributing plant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The provisions for supply plant systems are very similar to the provisions currently contained in both the Chicago Regional and Upper Midwest orders. Unlike the Chicago Regional and the Upper Midwest orders, however, this order does not contain a specific shipping requirement for individual plants within a supply plant system. In the current Chicago Regional order, pool supply plant systems have twice the percentage shipping standard of individual supply plants, with individual plants within the systems required to ship 47,000 pounds or three percent of their producer receipts,

whichever is less, in five of the six months of August through January. The current Upper Midwest order requires handlers with supply plants in a supply plant system to ship five percent of each handler's Grade A receipts, including milk diverted by the handler to nonpool plants, during one of the months of August through December.

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

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

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

Producer Milk

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

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

No significant differences in the treatment of milk received at pool plants are provided under this decision than under the current Chicago Regional or Upper Midwest orders. There are, however, several differences relating to diverted milk. This decision allows the operator of a pool plant to divert, or ship milk directly from the farm to another pool plant, the milk of producers for which it is the handler, and account for the milk as producer milk at the shipping plant. Allowing either a proprietary pool plant or a cooperative pool plant to divert milk to another pool plant is consistent with the Chicago Regional order. In the Upper Midwest order, milk that is received at a pool plant and for which a cooperative association is the handler is considered producer milk at the receiving plant. The Upper Midwest order specifies that a proprietary handler may divert milk to another pool plant and that such milk will be considered producer milk of the diverting proprietary handler. The language adopted under this decision leaves to the discretion of the cooperative association the option of diverting milk to another pool plant from its own pool plant or delivering the milk to the pool plant in its capacity as a handler of producer milk pursuant to § 1030.9(c).

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

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

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

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

into processing facilities or a storage tank.

Location Adjustments and Transportation Credits

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

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

Several interested persons commented on the use of transportation credits and assembly credits in this consolidated order, with most favoring such provisions but disagreeing to some extent with their proposed application. There was disagreement between the comments on whether the credit should apply to the shipping or the receiving handler and whether it should apply to all Class I milk, both direct-shipped and from plants, or just to milk transferred from plants and used in Class I. One commenter also stated that the proposed rate did not cover enough of the actual cost of moving milk.

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

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

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

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

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

Reporting and Payment Dates

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

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

as possible. The adopted provisions will accomplish that goal.

Central Order

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

Pool Plant

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

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

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

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

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

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

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

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

The percentage of receipts as qualifying shipments to distributing plants currently ranges from 30 to 50 percent for these orders, with the Iowa percentage reduced to 20 for the months of December through August. The adopted shipping standards for pool supply plants under the consolidated Central order are 35 percent for the months of September through November and January and 25 percent for all other months, with plants meeting the percentage standard for the months of August through April being allowed to retain their pool status for the immediately following months of May through July.

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

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

In addition, as in the consolidated Upper Midwest order, the provisions adopted in this decision will allow the market administrator to increase or decrease the required shipping percentage on a selected area basis, as well as a marketwide basis, if deemed necessary to reflect needed milk movements within this geographically

extensive marketing area. This provision has existed in the current Upper Midwest order for some time without resulting in any controversy, and is expected to be useful in view of the considerable enlargement of the marketing area through consolidation. Care in using the provision must be exercised to avoid placing handlers in areas in which shipping percentages are temporarily increased or decreased at a competitive disadvantage or advantage to handlers in areas that have not been so affected. However, it would be more inequitable to require increased shipments from plants in, for instance, Eastern Colorado, to ship milk to plants in eastern Illinois to supply deficits in that portion of the marketing area.

Producer Milk

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

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

Multiple Component Pricing

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

Mideast Order

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

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

Pool Plant

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

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

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

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

To assure continued pool qualification for all of the handlers who currently are associated with the Mideast markets, the *pool supply plant* definition of the consolidated Mideast order provides for all of the types of supply plants that currently qualify for pooling under the 4 principal orders. The Eastern Ohio-Western Pennsylvania pool plant provision includes a plant operated by a cooperative if the cooperative association delivers to distributing plants at least 35 percent of the milk for which it is the handler during the current month or over the preceding 12 months. The Southern Michigan order (Order 40) includes as pool supply plants: (a) A plant that has been a pool plant for 12 consecutive months and has a marketing agreement with a cooperative association, and (b) a system of supply plants operated by one or more handlers. Order 40 also includes some shipments to other Federal order plants and partially regulated distributing plants, in addition to pool distributing plants, as qualifying shipments by supply plants.

The percentage of receipts as qualifying shipments to distributing plants currently ranges from 30 to 40 percent for these orders, with direct deliveries from farms rather than plant transfers limited to half of the required deliveries under three of the orders. All four of the orders require performance of pooling standards by supply plants for the months of September through February, followed by a ''free ride'' period during which shipping

percentages need not be met by supply plants that met the shipping standards during the required period. The Indiana order contains a provision allowing the continued pooling of a plant that fails to meet pooling standards because of circumstances beyond the handler's control.

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

Producer Milk

The *producer* and *producer milk* provisions of the orders consolidated in the Mideast order are quite similar to and differ little from those incorporated in the other consolidated orders. The principal difference between some of the individual orders and the consolidated order would be the limit on the percentage of a handler's pooled producer milk that may be diverted to nonpool plants. The Ohio Valley, Indiana and Eastern Ohio-Western Pennsylvania orders all contain 50 percent diversion limits for the months of September through November, January and February and a 60 percent limit for the month of December, with no diversion limit for the months of March through August. The Southern Michigan order contains a 60-percent diversion limit for the months of September through February, with no limit for the months of March through August. In order to assure that all of the milk that has been pooled under these orders continues to qualify for pooling, the diversion limit adopted for the Mideast order is 60 percent for the months of September through February, with no limit for the March through August period. At the same time, the market administrator is authorized to increase or reduce the diversion limit as needed to maintain orderly marketing and efficient handling of milk in the marketing area.

Multiple Component Pricing

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

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

Somatic Cell Adjustment

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

Reporting and Payment Dates

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

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

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

6d. Western Region

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

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

Southwest Order

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

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

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

Pooling standards

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

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

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

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

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

A provision for the pooling of cooperative association balancing plants is also included in the consolidated order. A plant located within the marketing area that is operated by a cooperative association would qualify as a pool plant if pool plant status is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. The requirement that the plant be located in the marketing area ensures that milk pooled through the balancing plant is economically available to processors of fluid milk if needed.

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

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

As stated in the proposed rule, the pooling provisions for the Southwest order are similar to the provisions in the present Texas and New Mexico-West Texas orders. The pool supply plant standards are consistent with and reflect the current marketing conditions of the consolidated Southwest order. The standards should ensure that milk of producers servicing the Class I needs of the market will be pooled. The provisions for a supply plant in this

final decision does not recognize shipments directly from producers' farms as qualifying shipments for a supply plant. However, there currently are no supply plants regulated under the Texas or New Mexico-West Texas orders. Accordingly, the provisions should not place proprietary handlers at a competitive disadvantage and are appropriate to meet the needs of the market.

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

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

Producer-Handler

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

Producer Milk

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

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

Multiple Component Pricing

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

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

Transportation Credits for Surplus Milk

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

Payment Provision

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

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

Arizona-Las Vegas Order

Many of the provisions of the consolidated Arizona-Las Vegas order

are explained in the ''Identical Provisions'' portion of this final decision and need not be addressed here. Those provisions that deviate to some extent from the ''Identical Provisions'' are addressed in this discussion.

Pool Plant

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

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

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

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

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

Producer-Handler

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

Producer

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

Producer Milk

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

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

Based on the comments received by SMPA and an reevaluation of the marketing conditions in the consolidated Arizona-Las Vegas order, and noting that eight days production is about 40 percent, this final decision adopts for the Arizona-Las Vegas order a diversion limit of 50 percent for each month of the year. The 50 percent diversion limit year round is more flexible than the current order and the 20 percent limit recommended in the proposed rule and it would be easy to administer. In addition, the 50 percent diversion limit is consistent with the diversion limit included in the Southwest order, which is adjacent to the Arizona-Las Vegas Order. Thus, the 50 percent diversion limit each month should allow the Class I needs of the market to be met while ensuring the orderly disposition of milk. In addition, the market administrator will have the authority to adjust the diversion percentage.

Multiple Component Pricing

The Arizona-Las Vegas order does not provide for multiple component pricing (MCP). There are six plants that are expected to be regulated under the consolidated order: five proprietary

distributing plants, and one manufacturing plant operated by a cooperative association. The Class I utilization for the order is expected to be less than 50 percent, a level that would, in some other orders, be an indication that component pricing would be appropriate. However, the Class I utilization at the five distributing plants is more than 80 percent. With the exception of the one cooperative balancing plant, the handlers to be regulated constitute predominantly a Class I market.

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

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

This final decision does not adopt MCP for the consolidated Arizona-Las Vegas order. The current Central Arizona order does not contain a multiple component pricing plan. The handlers proposed to be regulated under the consolidated order are currently all, with one exception, regulated under the current Central Arizona order. The manufacturing of milk in the consolidated order is anticipated to be done primarily by Schreiber, at a non-pool plant. Schreiber is almost totally supplied by United Dairymen of Arizona (UDA). Due to these marketing situations (i.e., one buyer and one seller), the implementation of MCP in the consolidated Arizona-Las Vegas order would only benefit some of the producers of the order. All of the producers in the marketing area would not share equitably. As stated in the proposed rule and explained above, the fluid nature of much of the market and the current marketing situations do not warrant MCP at this time.

Payment Obligation of a Partially Regulated Distributing Plant

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

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

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

Western Order

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

Pool plant

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

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

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

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

The Western order final decision contains a provision that would permit a manufacturing plant operated by a cooperative association and located in

the marketing area to be a pool plant if 35 percent of the milk for which the cooperative is the handler is received at pool distributing plants during the month or during the immediately preceding 12-month period. This provision is similar to one currently contained in the Great Basin order and in some of the other consolidated orders.

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

Proprietary Bulk Tank Handler

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

Producer-Handler

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

Producer

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

Producer Milk

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

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

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

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

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

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

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

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

Reports of Receipts and Utilization and Payroll Reports

The Western order requires pool handlers to file a ''report of receipts and utilization'' on or before the seventh day

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

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

Multiple Component Pricing

Both the Great Basin order and the Southwestern Idaho-Eastern Oregon order currently have multiple component pricing based on protein without a somatic cell adjustment. The multiple component pricing provisions of the consolidated Western order should be the same as those for other proposed orders that provide for multiple component pricing based on protein but without a somatic cell adjustment. The Western order has a significant amount of milk used in manufactured products, especially cheese, and component pricing will enable producers to be paid according to the value of the components of their milk. However, the somatic cell adjustment included in some of the consolidated orders for which component pricing is proposed is not warranted by marketing conditions under the Western order, and such an adjustment is not included in the final decision.

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

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

Payments To and From the Producer Settlement Fund

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

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

Payments to Producers and Cooperative Associations

Under the Western order, partial payments would be due from handlers to producers who are not members of cooperative associations on or before the 25th day of the month in an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producers during the first 15 days of the month. Final payments would be due on or before the 17th day after the end of the month.

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

Pacific Northwest Order

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

Pool Distributing Plant

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

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

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

Pool Supply Plant

For the most part, the current pool supply plant definition of the Pacific Northwest order and the performance standard of shipping 20 percent of the

milk is appropriate to the marketing conditions in the area. However, the provision that currently *requires* a handler to include producer milk moved directly to pool distributing plants in the shipments on which pool plant performance is calculated is changed to *allow* the handler to include such movements if the handler wants to qualify its plant for pooling. A plant operator who receives milk at a plant only for manufacturing use also will be able to supply producer milk directly to distributing plants without a requirement that the manufacturing plant be a supply plant.

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

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

Nonpool Plant

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

The present Pacific Northwest order provisions allow a state institution to avoid any regulation on the portion of its milk that is used only within the institution, and apply some pricing regulation to that portion that is distributed in commercial channels. In some respects, this arrangement is similar to the situation of partially regulated distributing plants. However, partially regulated distributing plant operators, to avoid obligations under Federal orders, must show that they pay the dairy farmers who ship milk to them at a rate at least commensurate with that paid to producers whose milk is pooled under the order. In any case, they must procure a milk supply in the competitive market. State institutions may have any number of cost advantages over regulated handlers in the production and processing of milk, such as not having to pay a minimum wage and not having to pay property taxes. It would be unjust to allow such institutions to compete with fully regulated handlers in regular commercial channels as if the playing field were level. Therefore, state and other institutions that compete with regulated handlers in regular commercial channels, such as bids for school milk programs, would be regulated on those sales.

Producer-Handler

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

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

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

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

Reserve Supply Unit

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

Under the terms of the present provision, the cooperative members of the reserve supply unit must be located near a pool distributing plant, as a reserve supply plant must be located in the marketing area. Both the reserve supply unit and the reserve supply plant provisions require that the plant or unit operator request prior approval of the market administrator to initiate and cancel their status, both require long-term association with the market, and both provide substantial penalties for failing to meet all required conditions. Although the cooperative unit does not have monthly qualification requirements, it is subject to a call by the market administrator after the market administrator's investigation of the need for supplemental supplies of milk. Because of the current existence of this provision, based on the need shown at a public hearing, and its similarities to a pooling mechanism suggested for other orders, provision for the cooperative reserve supply unit will continue to be included in the Pacific Northwest order.

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

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

Producer and Producer Milk

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

Northwest pool while enjoying the benefits of the State orders' Class I returns.

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

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

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

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

Payments to Producers and Cooperative Associations

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

Announcement of Producer Prices

The dates on which handler reports, market administrator's announcement of producer prices, and payment to producers would remain unchanged from those of the current order.

General Comment Related to Orders

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

Major Changes to Orders From the Proposed Rule

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

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

7. Miscellaneous and Administrative

(a) Consolidation of the marketing service, administrative expense, and producer-settlement funds. To complete the consolidation of the present 31 Federal orders effectively and equitably, the reserve balances in the marketing service, administrative expense, and producer-settlement funds that have resulted under the individual orders would be combined.

The balances in these three funds should be combined on the same basis that the marketing areas are consolidated into regional orders herein. For instance, the Texas and New Mexico-West Texas marketing areas are merged into a new regional Southwest order. Accordingly, the reserve balances in the marketing service, administrative expense and producer-settlement funds of the two individual orders likewise should be combined into three separate funds established under the consolidated Southwest order.

The marketing areas of the 11 consolidated orders essentially represent the territory covered by the 31 individual orders plus the territory included in the former Tennessee Valley marketing area. Because of this, the handlers and producers servicing the milk needs of the individual markets will continue to furnish the milk needs of the applicable regional market for the most part.

In that regard, the reserve balances in the funds that have resulted under the 31 individual orders should be combined on a marketing area basis into the appropriate separate fund established for each of the 11 regional orders. Any liabilities of such funds under the individual orders would be paid from the appropriate newly established fund of the applicable regional order. Similarly, obligations that are due the separate funds under the individual orders would be paid to the appropriate combined fund of the applicable consolidated order.

In most cases, the entire marketing area of an order or orders is included in the consolidated marketing area of one of the 11 regional orders. Four present marketing areas would be split between two consolidated orders. One county of the present Louisville-Lexington-Evansville (Order 46) marketing area would be included in the Southeast order, and the rest of the territory in the Order 46 marketing area would be included under the Appalachian order. Even though one Order 46 county is included in the consolidated Southeast order, all of the present Order 46 producers and handlers are expected to be covered under the consolidated Appalachian order. Accordingly, the balances in the Order 46 marketing service, administrative expense, and producer settlement funds should be consolidated into the three separate funds established for the consolidated Appalachian market.

Different regulatory situations, however, will occur in the other three instances where a current marketing area is divided between two consolidated orders. The southwest Missouri and northwest Arkansas portions of the current Southwest Plains order area are included in the consolidated Southeast marketing area, while the remainder of the Southwest Plains area is combined with the marketing areas of eight other orders in the consolidated Central marketing area. Similarly, one county of the current Great Basin (Order 139) marketing area is included in the consolidated Arizona-Las Vegas order and the rest of the Order 139 marketing area is included in the consolidated marketing area for the West. In the third instance, two zones of the Michigan Upper Peninsula (Order 44) marketing area are included in the consolidated Upper Midwest marketing area and the other zone of the Order 44 marketing area is included in the marketing area for the Mideast regional order.

In each of these 3 cases, some of the producers and handlers of each of the current order areas that are being divided will become pooled under one consolidated order, while the other producers and handlers of each of these areas will become pooled under another regional order. Accordingly, any reserve balances in the marketing service, administrative expense and producer-settlement funds of these three individual orders should be divided equitably among the applicable consolidated orders.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrators are performing such services. Since the marketing areas of the 11 regional orders encompass the territory covered by the individual orders, for the most part, the producers who have contributed to the marketing service funds of the individual orders are expected to continue supplying milk for the consolidated orders. Since marketing service programs will be continued for these producers under the regional orders, it would be appropriate to combine the reserve balances in the marketing service funds of the order or orders that are represented in the consolidation of each of the 11 regional orders.

When the consolidated marketing area includes the marketing area of one or more individual orders, any remaining balance in the marketing service fund of the individual order or orders should be combined in the marketing service fund established for the applicable consolidated order. If a current marketing area is split between two consolidated markets and the regulatory status of producers and handlers is divided between the two regional orders, as is the case with the Michigan Upper Peninsula, Southwest Plains, and Great Basin orders, any balance in the marketing service fund of the individual order should be prorated between the two consolidated orders on the basis of the amount of milk subject to the marketing service deduction that will be covered by each respective regional order (using producer deliveries in the last month the individual orders are in effect but assuming that the marketing areas had been consolidated).

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. For the most part, handlers currently regulated under the individual orders will continue to be regulated under the consolidated orders. In view of this, it would be an unnecessary administrative and financial burden to allocate the reserve funds of the individual orders back to handlers and then accumulate an adequate reserve for each of the consolidated orders. It would be as equitable and more efficient to combine the remaining administrative monies accumulated under the individual orders in the same manner as the marketing areas are combined.

For the orders where the consolidated marketing area includes the regulated territory of one or more of the individual orders, any remaining balance in the administrative expense fund of the individual order or orders would be combined into the administrative expense fund established for the applicable consolidated order. In the situations where the current individual marketing area is split and the regulatory status of producers and handlers is divided (as in the case of the Michigan Upper Peninsula, Southwest Plains, and Great Basin orders) between two consolidated marketing areas, the remaining balance in the administrative expense fund should be prorated between the two regional orders on the basis of the amount of milk that would be pooled and priced under each respective consolidated order (using producer milk deliveries during the last month the individual orders are in effect but assuming that the orders had been consolidated).

Likewise, the producer-settlement fund balances of the individual orders should be combined. They should be combined on the same basis as the marketing areas are consolidated herein. This will enable the producer-settlement funds of the consolidated orders to continue without interruption.

The producers currently supplying the individual markets are expected to supply milk for the consolidated markets. Thus, monetary balances in the producer-settlement funds of the individual orders now would be reflected in the pay prices of the producers who will benefit from the applicable consolidated orders. The combined fund for each consolidated order also would serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) occurring under the individual orders.

The same procedure used in combining the remaining balances in the marketing service and administrative expense funds of the individual orders should be followed in combining the producer-settlement fund balances when the individual orders are consolidated. For orders where the consolidated marketing area includes the marketing area of one or more orders, any remaining balance in the producer-settlement fund of the individual order or orders would be combined into the producer-settlement fund established for the applicable consolidated order. In the three situations (Michigan Upper Peninsula, Southwest Plains, and Great Basin) where the marketing area of a current order is split between two consolidated orders and some of the individual market's producers and handlers would be regulated under one consolidated order and others would be regulated under another consolidated order, the balance in the producer-settlement fund should be divided equitably between the two consolidated orders. Since the Michigan Upper Peninsula order is an individual-handler pool market, no producer-settlement fund is provided. In the 2 remaining instances in which current marketing areas are divided between 2 consolidated orders, the remaining balance in the producer-settlement funds of the Southwest Plains and Great Basin orders should be prorated between the consolidated orders on the basis of the amount of milk that will be pooled and priced under each respective consolidated order (using producer milk deliveries during the last month the individual orders are in effect but assuming that the orders had been consolidated).

(b) Consolidation of the transportation credit balancing funds. To complete the consolidation process, the reserve balances in the transportation credit balancing funds that are in effect now under three Southeast orders (Carolina, Order 5; Southeast, Order 7; and Louisville-Lexington-Evansville, Order 46) also should be consolidated. These funds should be combined on a marketing area basis. In that regard, the reserve balances in the transportation credit balancing funds of the Carolina and Louisville-Lexington-Evansville orders should be consolidated into a newly established transportation credit balancing fund for the consolidated Appalachian order, which also includes the current marketing areas of these two orders with the exception of one county. Similarly, the reserve balance in the transportation credit balancing fund of the present Southeast order should be transferred to the consolidated Southeast order, which includes all of the marketing area of the present Southeast order. These procedures will enable the transportation credits to continue without interruption under these two consolidated orders.

(c) General findings.

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

(1) 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;

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

(3) 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 the marketing agreements;

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

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1000.85 of the General Provisions.

Comments

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the comments received was carefully and fully considered in conjunction with the rulemaking record.

Marketing Agreements and Order Amending the Orders

The marketing agreements regulating the handling of milk in each of the consolidated orders are not included in this final decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby amended. The following order amending the orders regulating the handling of milk in the respective marketing areas of these orders is proposed as the detailed and appropriate means by which the foregoing conclusions may be carried out.

Referendum Order to Determine Producer Approval

This decision does not provide for conducting referendums of producers to determine if they approve of the issuance of the consolidated orders. A notice to conduct a referendum on each of the consolidated orders will be issued at a future date.

List of Subjects in 7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

Milk marketing orders.

Dated: March 12, 1999.

Michael V. Dunn,

Under Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

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

Findings and Determinations

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

(a) The said orders as hereby 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 aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreements;

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

(e) It is hereby found that the necessary expense of the market administrators for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1000.85 of the General Provisions.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the proposed rule issued by the Administrator, Agricultural Marketing Service, on January 21, 1998, and published in the **Federal Register** on January 31, 1998 (63 FR 4802), as modified herein, shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

For the reasons set forth in the preamble and under the authority of Title 7, chapter X, parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 are revised and parts 1002, 1004, 1012, 1013, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1134, 1137, 1138 and 1139 are removed and reserved as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

Subpart A—Scope and Purpose

Sec.
1000.1 Scope and purpose of this Part 1000.

Subpart B—Definitions

1000.2 General definitions.
1000.3 Route disposition.
1000.4 Plant.
1000.5 Distributing plant.
1000.6 Supply plant.
1000.8 Nonpool plant.
1000.9 Handler.
1000.14 Other source milk.
1000.15 Fluid milk product.
1000.16 Fluid cream product.
1000.17 [Reserved]
1000.18 Cooperative association.
1000.19 Commercial food processing establishment.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

1000.25 Market administrator.

Subpart D—Rules Governing Order Provisions

1000.26 Continuity and separability of provisions.

Subpart E—Rules of Practice and Procedure Governing Handlers

1000.27 Handler responsibility for records and facilities.
1000.28 Termination of obligations.

Subpart F—Classification of Milk

1000.40 Classes of utilization.
1000.41 [Reserved]
1000.42 Classification of transfers and diversions.
1000.43 General classification rules.
1000.44 Classification of producer milk.
1000.45 Market administrator's reports and announcements concerning classification.

Subpart G—Class Prices

1000.50 Class prices, component prices, and advanced pricing factors.
1000.51 [Reserved]
1000.52 Adjusted Class I differentials.
1000.53 Announcement of class prices, component prices, and advanced pricing factors.
1000.54 Equivalent price.

Subpart H—Payments for Milk

1000.70 Producer-settlement fund.
1000.76 Payments by a handler operating a partially regulated distributing plant.
1000.77 Adjustment of accounts.
1000.78 Charges on overdue accounts.

Subpart I—Administrative Assessment and Marketing Service Deduction

1000.85 Assessment for order administration.
1000.86 Deduction for marketing services.

Subpart J—Miscellaneous Provisions

1000.90 Dates.
1000.91 [Reserved]
1000.92 [Reserved]
1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 601—674.

Subpart A—Scope and Purpose

§ 1000.1 Scope and purpose of this Part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order in 7 CFR, chapter X, except as specifically defined otherwise, or modified, or otherwise provided, in an individual order in 7 CFR, chapter X.

Subpart B—Definitions

§ 1000.2 General definitions.

(a) *Act* means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

(b) *Order or Federal milk order* means the applicable part of 7 CFR, chapter X, issued pursuant to section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department* means the U.S. Department of Agriculture.

(d) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) *Person* means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product in consumer-type packages or dispenser units classified as Class I milk.

§ 1000.4 Plant.

(a) Except as provided in paragraph (b) of this section, *plant* means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk

milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition; or

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim or the removal of water from milk.

§ 1000.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants.

§ 1000.6 Supply plant.

Supply plant means a plant approved by a duly constituted regulatory agency for the handling of Grade A milk that receives milk directly from dairy farmers and transfers or diverts fluid milk products to other plants or manufactures dairy products on its premises.

§ 1000.8 Nonpool plant.

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A plant fully regulated under another Federal order* means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through the operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 150,000 pounds or less during the month.

§ 1000.9 Handler.

Handler means:

(a) Any person who operates a pool plant or a nonpool plant.

(b) Any person who receives packaged fluid milk products from a plant for resale and distribution to retail or wholesale outlets, any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this paragraph under any Federal milk order are not subject to the payment provisions of §§ ____.70, ____.71, ____.72, ____ .73, ____.76, and ____.85 of that order.

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants pursuant to § ____.13 of the order. The operator of a pool plant receiving milk from a cooperative association may be the handler for such milk if both parties notify the market administrator of this agreement prior to the time that the milk is delivered to the pool plant and the plant operator purchases the milk on the basis of farm bulk tank weights and samples.

§ 1000.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1000.9(c) and § 1135.11, or pool plants;

(b) Products (other than fluid milk products, fluid cream products, and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Receipts of any milk product (other than a fluid milk product or a fluid cream product) for which the handler fails to establish a disposition.

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. Such products include, but are not limited to: Milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated, or reconstituted. As used in this part, the term *concentrated milk* means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) The term fluid milk product shall not include:

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

§ 1000.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1000.17 [Reserved]

§ 1000.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines is qualified under the provisions of the Capper-Volstead Act, has full authority in the sale of milk of its members, and is engaged in marketing milk or milk products for its members. A federation of 2 or more cooperatives incorporated under the laws of any state will be considered a cooperative association under any Federal milk order if all member cooperatives meet the requirements of this section.

§ 1000.19 Commercial food processing establishment.

Commercial food processing establishment means any facility, other than a milk plant, to which fluid milk products and fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no other disposition of fluid milk products other than those received in consumer-type packages (1 gallon or less). Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, §§ ____.13 and ____.52 of each Federal milk order.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

§ 1000.25 Market administrator.

(a) *Designation.* The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his/her administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Maintain and invest funds outside of the United States Department of the Treasury for the purpose of administering the order;

(3) Make rules and regulations to effectuate the terms and provisions of the order;

(4) Receive, investigate, and report complaints of violations to the Secretary; and

(5) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his/her administration, including, but not limited to, the following:

(1) Employ and fix the compensation of persons necessary to enable him/her to exercise the powers and perform the duties of the office;

(2) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of the office and in the performance of the duties of the office, including the market administrator's compensation;

(3) Keep records which will clearly reflect the transactions provided for in the order and upon request by the Secretary, surrender the records to a successor or such other person as the Secretary may designate;

(4) Furnish information and reports requested by the Secretary and submit office records for examination by the Secretary;

(5) Announce publicly at his/her discretion, unless otherwise directed by the Secretary, by such means as he/she deems appropriate, the name of any handler who, after the date upon which the handler is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order; or

(iii) Made available records and facilities as required pursuant to § 1000.27;

(6) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities, and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect;

(7) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(8) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

Subpart D—Rules Governing Order Provisions

§ 1000.26 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of the order whenever he/she finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order the market administrator, or such other liquidating agent designated by the Secretary, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his/her possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

Subpart E—Rules of Practice and Procedure Governing Handlers

§ 1000.27 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of its operations and make such records and its facilities available to the market administrator. If

adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall be considered as used in the highest-priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of its operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers, and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary, or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his/her duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.28 Termination of obligations.

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 *et seq.*) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims is due under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

Subpart F—Classification of Milk

§ 1000.40 Classes of Utilization.

Except as provided in § 1000.42, all skim milk and butterfat required to be reported pursuant to § _____.30 of each Federal milk order shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except as otherwise provided in this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(b) *Class II milk* shall be all skim milk and butterfat:

(1) In fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(2) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Custards, puddings, pancake mixes, coatings, batter, and similar products;

(v) Buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total

solids, provided that the product is labeled to indicate the food starch content;

(vi) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers;

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;

(viii) A fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section; and

(ix) Any product not otherwise specified in this section; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled;

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

(iii) Evaporated or sweetened condensed milk in a consumer-type package; and

(2) In shrinkage assigned pursuant to § 1000.43(b).

(d) *Class IV milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Butter; and

(ii) Any milk product in dried form;

(2) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form;

(3) In the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; and

(4) In shrinkage assigned pursuant to § 1000.43(b).

(e) *Other uses.* Other uses include skim milk and butterfat used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

§ 1000.41 [Reserved]

§ 1000.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant or a handler described in § 1135.11 to another pool plant shall be classified as Class I milk unless the handlers both request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving plant after the computations pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b);

(2) If the transferring plant received during the month other source milk to be allocated pursuant to § 1000.44(a)(3) or the corresponding step of § 1000.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferring handler received during the month other source milk to be allocated pursuant to § 1000.44(a)(8) or (9) or the corresponding steps of § 1000.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the receiving plant.

(b) *Transfers and diversions to a plant regulated under another Federal order.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to a plant regulated under another Federal order shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from a plant regulated under another Federal order of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1) or (2) of this section:

(1) As Class I milk, if transferred as packaged fluid milk products;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order:

(i) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as other than Class I to the extent that such utilization is available for such classification pursuant to the allocation provisions of the other order;

(ii) If diverted, the diverting handler must request a classification other than Class I. If the plant receiving the diverted milk does not have sufficient utilization available for the requested classification and some of the diverted milk is consequently assigned to Class I use, the diverting handler shall be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler so chooses, it may designate which dairy farmers whose milk was diverted during the month will be designated as producers under the order physically receiving the milk. If the diverting handler declines to accept either of these options, the market administrator will prorate the portion of diverted milk in excess of Class II, III, and IV use among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the excess diverted milk has been assigned as producer milk under the receiving order; and

(iii) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I, subject to adjustment when such information is available.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under any Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product; and

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product to an exempt plant. For this purpose, the receiving handler's utilization of skim milk and butterfat in each class, in series beginning with Class IV, shall be assigned to the extent possible to its receipts of skim milk and butterfat, in bulk fluid cream products, and bulk fluid milk products, respectively, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat

transferred or diverted in the following forms from a pool plant to a nonpool plant that is not a plant regulated under another order, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization, excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferring handler or diverting handler claims such classification in such handler's report of receipts and utilization filed pursuant to § _____.30 of each Federal milk order for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and plants regulated under other Federal orders;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the receiving plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with Class IV at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible to any remaining utilization, in sequence beginning with Class IV at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1000.43 General classification rules.

In determining the classification of producer milk pursuant to § 1000.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § _____.30 of each Federal milk order and shall compute separately for each pool plant, for each handler described in § 1000.9(c) and § 1135.11, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1000.40 and 1000.42, and paragraph (b) of this section.

(b) *Shrinkage and overage.* For purposes of classifying all milk reported by a handler pursuant to § _____.30 of each Federal milk order the market administrator shall determine the shrinkage or overage of skim milk and butterfat for each pool plant and each handler described in § 1000.9(c) and § 1135.11 by subtracting total utilization from total receipts. Any positive difference shall be shrinkage, and any negative difference shall be overage.

(1) Shrinkage incurred by pool plants qualified pursuant to § ——.7 of any Federal milk order shall be assigned to the lowest-priced class to the extent that such shrinkage does not exceed:

(i) Two percent of the total quantity of milk physically received at the plant directly from producers' farms on the basis of farm weights and tests;

(ii) Plus 1.5 percent of the quantity of bulk milk physically received on a basis other than farm weights and tests, excluding concentrated milk received by agreement for other than Class I use;

(iii) Plus .5 percent of the quantity of milk diverted by the plant operator to another plant on a basis other than farm weights and tests; and

(iv) Minus 1.5 percent of the quantity of bulk milk transferred to other plants, excluding concentrated milk transferred by agreement for other than Class I use.

(2) A handler described in § 1000.9(c) or § 1135.11 that delivers milk to plants on a basis other than farm weights and tests shall receive a lowest-priced-class shrinkage allowance of .5 percent of the total quantity of such milk picked up at producers' farms.

(3) Shrinkage in excess of the amounts provided in paragraphs (b)(1) and (2) of this section shall be assigned to existing utilization in series starting with Class I. The shrinkage assigned pursuant to this paragraph shall be added to the handler's reported utilization and the result shall be known as the *gross utilization in each class.*

(c) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler

shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1000.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1000.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1000.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1000.9(a) for each pool plant of the handler separately and for each handler described in § 1000.9(c) and § 1135.11 the classification of producer milk by allocating the handler's receipts of skim milk and butterfat to the handler's gross utilization of such receipts pursuant to § 1000.43(b)(3) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal order in the immediately preceding month;

(iii) Fluid milk products received in packaged form from plants regulated under other Federal orders; and

(iv) To the extent that the receipts described in paragraphs (a)(1)(i) through (iii) of this section exceed the gross Class I utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in the receipts of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product in Class II (excluding the quantity of such skim milk that was classified as Class IV milk pursuant to § 1000.40(d)(3)). To the extent that the receipts described in this paragraph exceed the gross Class II utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in:

(i) Receipts of bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product);

(ii) Receipts of fluid milk products and bulk fluid cream products for which appropriate health approval is not established and from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from an exempt plant;

(iv) Fluid milk products and bulk fluid cream products received from a producer-handler as defined under this order or any other Federal order;

(v) Receipts of fluid milk products from dairy farmers for other markets; and

(vi) The excess receipts specified in paragraphs (a)(1)(iv) and (a)(2) of this section.

(4) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the receipts of fluid milk products from an unregulated supply plant that were not previously subtracted in this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in these other classes combined.

(5) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, receipts of fluid milk products from an unregulated supply plant that were not subtracted in previous paragraphs, and which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(5)(i) and (ii) of this section;

(i) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step; and

(ii) Subtract from the above result the pounds of skim milk in receipts of producer milk and fluid milk products from other pool plants.

(6) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler, if other than Class I classification is requested, but not in excess of the pounds of skim milk remaining in these classes combined.

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in fluid milk products and bulk fluid cream products in inventory at the beginning of the month that were not previously subtracted in this section.

(8) Subtract from the pounds of skim milk remaining in each class at the plant receipts of skim milk in fluid milk products from an unregulated supply plant that were not previously subtracted in this section and that were not offset by transfers or diversions of fluid milk products to the unregulated supply plant from which fluid milk products to be allocated at this step were received. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV.

(9) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler that were not subtracted in paragraph (a)(6) of this section. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(i) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1000.45(a); or

(ii) The total pounds of skim milk remaining in each class at this allocation step.

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from a handler described in § 1135.11 according to the classification of such products pursuant to § 1000.42(a).

(11) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class IV.

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section.

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraphs (a) and (b) of this section.

§ 1000.45 Market administrator's reports and announcements concerning classification.

(a) Whenever required for the purpose of allocating receipts from plants regulated under other Federal orders pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in Class I during the month of skim milk and butterfat, respectively, in producer milk of all handlers. The estimate shall be based upon the most current available data and shall be final for such purpose.

(b) The market administrator shall report to the market administrators of other Federal orders as soon as possible after the handlers' reports of receipts and utilization are received, the class to which receipts from plants regulated under other Federal orders are allocated pursuant to §§ 1000.43(d) and 1000.44 (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter any change in allocation required to correct errors disclosed on the verification of such report.

(c) The market administrator shall furnish each handler operating a pool plant and each handler described in § 1135.11 who has shipped fluid milk products or bulk fluid cream products to a plant fully regulated under another Federal order the class to which the shipments were allocated by the market administrator of the other Federal order on the basis of the report by the receiving handler and, as necessary, any changes in the allocation arising from the verification of such report.

(d) The market administrator shall report to each cooperative association which so requests, the percentage of producer milk delivered by members of the association that was used in each class by each handler receiving the milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by the handler.

Subpart G—Class Prices

§ 1000.50 Class prices, component prices, and advanced pricing factors.

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the National Agricultural Statistical Service (NASS) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g)–(p) of this section shall be based on a weighted average for the preceding month of weekly prices announced by NASS on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

(d) *The Class II price* per hundredweight, rounded to the nearest cent, shall be .965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

(e) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be the advanced Class IV skim milk price computed in paragraph (q)(2) of this section plus 70 cents.

(f) *Class II nonfat solids price.* The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9.

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the butterfat price.

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.1 plus the other solids price per pound times 5.9.

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the butterfat price.

(k) *Class IV skim milk price.* The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9.

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.4 cents, with the result divided by 0.82.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 13.7 cents, with the result divided by 1.02.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582;

(ii) Subtract the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.28.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 13.7 cents, with the result divided by 0.968.

(p) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight of milk shall be determined as follows:

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

(2) Subtract the somatic cell count of the milk (reported in thousands) from 350; and

(3) Multiply the amount computed in paragraph (p)(1) of this section by the amount computed in paragraph (p)(2) of this section and round to the nearest full cent.

(q) *Advanced pricing factors.* For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and another solids price;

(ii) Multiply the protein price computed in paragraph (q)(1)(i) of this section by 3.1;

(iii) Multiply the other solids price per pound computed in paragraph (q)(1)(i) of this section by 5.9; and

(iv) Add the amounts computed in paragraphs (q)(1)(ii) and (iii) of this section.

(2) An advanced Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (m) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.4 cents from this average, and dividing the result by 0.82.

§ 1000.51 [Reserved]

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(b) and (c) shall be as follows:

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
AUTAUGA	AL	01001	2.90
BALDWIN	AL	01003	3.30
BARBOUR	AL	01005	3.20
BIBB	AL	01007	2.70
BLOUNT	AL	01009	2.55
BULLOCK	AL	01011	3.10
BUTLER	AL	01013	3.20
CALHOUN	AL	01015	2.70
CHAMBERS	AL	01017	2.90
CHEROKEE	AL	01019	2.55
CHILTON	AL	01021	2.70
CHOCTAW	AL	01023	3.10
CLARKE	AL	01025	3.10
CLAY	AL	01027	2.80
CLEBURNE	AL	01029	2.70
COFFEE	AL	01031	3.20
COLBERT	AL	01033	2.25
CONECUH	AL	01035	3.20
COOSA	AL	01037	2.80
COVINGTON	AL	01039	3.20
CRENSHAW	AL	01041	3.20
CULLMAN	AL	01043	2.55
DALE	AL	01045	3.20
DALLAS	AL	01047	2.90
DE KALB	AL	01049	2.25
ELMORE	AL	01051	2.90
ESCAMBIA	AL	01053	3.30
ETOWAH	AL	01055	2.55
FAYETTE	AL	01057	2.70
FRANKLIN	AL	01059	2.25
GENEVA	AL	01061	3.30
GREENE	AL	01063	2.70
HALE	AL	01065	2.70
HENRY	AL	01067	3.20
HOUSTON	AL	01069	3.30
JACKSON	AL	01071	2.25
JEFFERSON	AL	01073	2.70
LAMAR	AL	01075	2.70
LAUDERDALE	AL	01077	2.20

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
LAWRENCE	AL	01079	2.25
LEE	AL	01081	2.90
LIMESTONE	AL	01083	2.25
LOWNDES	AL	01085	3.10
MACON	AL	01087	3.10
MADISON	AL	01089	2.25
MARENGO	AL	01091	3.10
MARION	AL	01093	2.55
MARSHALL	AL	01095	2.25
MOBILE	AL	01097	3.30
MONROE	AL	01099	3.20
MONTGOMERY	AL	01101	3.10
MORGAN	AL	01103	2.25
PERRY	AL	01105	2.70
PICKENS	AL	01107	2.70
PIKE	AL	01109	3.20
RANDOLPH	AL	01111	2.80
RUSSELL	AL	01113	3.10
ST. CLAIR	AL	01115	2.70
SHELBY	AL	01117	2.70
SUMTER	AL	01119	2.70
TALLADEGA	AL	01121	2.70
TALLAPOOSA	AL	01123	2.90
TUSCALOOSA	AL	01125	2.70
WALKER	AL	01127	2.70
WASHINGTON	AL	01129	3.10
WILCOX	AL	01131	3.10
WINSTON	AL	01133	2.55
APACHE	AZ	04001	1.90
COCHISE	AZ	04003	1.60
COCONINO	AZ	04005	1.90
GILA	AZ	04007	1.60
GRAHAM	AZ	04009	1.60
GREENLEE	AZ	04011	1.60
LA PAZ	AZ	04012	1.60
MARICOPA	AZ	04013	1.55
MOHAVE	AZ	04015	1.90
NAVAJO	AZ	04017	1.90
PIMA	AZ	04019	1.60
PINAL	AZ	04021	1.55
SANTA CRUZ	AZ	04023	1.60
YAVAPAI	AZ	04025	1.60
YUMA	AZ	04027	1.60
ARKANSAS	AR	05001	2.65
ASHLEY	AR	05003	2.75
BAXTER	AR	05005	1.90
BENTON	AR	05007	1.70
BOONE	AR	05009	1.70
BRADLEY	AR	05011	2.65
CALHOUN	AR	05013	2.65
CARROLL	AR	05015	1.70
CHICOT	AR	05017	2.75
CLARK	AR	05019	2.35
CLAY	AR	05021	2.35
CLEBURNE	AR	05023	2.10
CLEVELAND	AR	05025	2.65
COLUMBIA	AR	05027	2.35
CONWAY	AR	05029	2.10
CRAIGHEAD	AR	05031	2.65
CRAWFORD	AR	05033	1.90
CRITTENDEN	AR	05035	2.65
CROSS	AR	05037	2.65
DALLAS	AR	05039	2.35
DESHA	AR	05041	2.75
DREW	AR	05043	2.75
FAULKNER	AR	05045	2.35
FRANKLIN	AR	05047	1.90
FULTON	AR	05049	2.10
GARLAND	AR	05051	2.10
GRANT	AR	05053	2.35
GREENE	AR	05055	2.35
HEMPSTEAD	AR	05057	2.10

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
HOT SPRING	AR	05059	2.35
HOWARD	AR	05061	2.10
INDEPENDENCE	AR	05063	2.35
IZARD	AR	05065	2.10
JACKSON	AR	05067	2.35
JEFFERSON	AR	05069	2.65
JOHNSON	AR	05071	1.90
LAFAYETTE	AR	05073	2.35
LAWRENCE	AR	05075	2.35
LEE	AR	05077	2.65
LINCOLN	AR	05079	2.65
LITTLE RIVER	AR	05081	2.10
LOGAN	AR	05083	1.90
LONOKE	AR	05085	2.35
MADISON	AR	05087	1.70
MARION	AR	05089	1.90
MILLER	AR	05091	2.10
MISSISSIPPI	AR	05093	2.65
MONROE	AR	05095	2.65
MONTGOMERY	AR	05097	2.10
NEVADA	AR	05099	2.35
NEWTON	AR	05101	1.90
OUACHITA	AR	05103	2.35
PERRY	AR	05105	2.10
PHILLIPS	AR	05107	2.65
PIKE	AR	05109	2.10
POINSETT	AR	05111	2.65
POLK	AR	05113	2.10
POPE	AR	05115	1.90
PRAIRIE	AR	05117	2.65
PULASKI	AR	05119	2.35
RANDOLPH	AR	05121	2.10
ST. FRANCIS	AR	05123	2.65
SALINE	AR	05125	2.35
SCOTT	AR	05127	1.90
SEARCY	AR	05129	1.90
SEBASTIAN	AR	05131	1.90
SEVIER	AR	05133	2.10
SHARP	AR	05135	2.10
STONE	AR	05137	2.10
UNION	AR	05139	2.65
VAN BUREN	AR	05141	2.10
WASHINGTON	AR	05143	1.70
WHITE	AR	05145	2.35
WOODRUFF	AR	05147	2.65
YELL	AR	05149	2.10
ALAMEDA	CA	06001	1.75
ALPINE	CA	06003	1.20
AMADOR	CA	06005	1.20
BUTTE	CA	06007	1.65
CALAVERAS	CA	06009	1.20
COLUSA	CA	06011	1.80
CONTRA COSTA	CA	06013	1.75
DEL NORTE	CA	06015	1.80
EL DORADO	CA	06017	1.20
FRESNO	CA	06019	1.40
GLENN	CA	06021	1.80
HUMBOLDT	CA	06023	1.80
IMPERIAL	CA	06025	1.60
INYO	CA	06027	1.50
KERN	CA	06029	1.60
KINGS	CA	06031	1.40
LAKE	CA	06033	1.80
LASSEN	CA	06035	1.65
LOS ANGELES	CA	06037	1.60
MADERA	CA	06039	1.40
MARIN	CA	06041	1.80
MARIPOSA	CA	06043	1.20
MENDOCINO	CA	06045	1.80
MERCED	CA	06047	1.40
MODOC	CA	06049	1.65
MONO	CA	06051	1.20

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
MONTEREY	CA	06053	2.20
NAPA	CA	06055	1.80
NEVADA	CA	06057	1.40
ORANGE	CA	06059	1.60
PLACER	CA	06061	1.40
PLUMAS	CA	06063	1.65
RIVERSIDE	CA	06065	1.60
SACRAMENTO	CA	06067	1.40
SAN BENITO	CA	06069	1.75
SAN BERNARDINO	CA	06071	1.60
SAN DIEGO	CA	06073	1.80
SAN FRANCISCO	CA	06075	1.75
SAN JOAQUIN	CA	06077	1.40
SAN LUIS OBISPO	CA	06079	2.20
SAN MATEO	CA	06081	1.75
SANTA BARBARA	CA	06083	2.20
SANTA CLARA	CA	06085	1.75
SANTA CRUZ	CA	06087	1.75
SHASTA	CA	06089	1.80
SIERRA	CA	06091	1.40
SISKIYOU	CA	06093	1.80
SOLANO	CA	06095	1.65
SONOMA	CA	06097	1.80
STANISLAUS	CA	06099	1.40
SUTTER	CA	06101	1.65
TEHAMA	CA	06103	1.80
TRINITY	CA	06105	1.80
TULARE	CA	06107	1.40
TUOLUMNE	CA	06109	1.20
VENTURA	CA	06111	2.20
YOLO	CA	06113	1.65
YUBA	CA	06115	1.65
ADAMS	CO	08001	1.55
ALAMOSA	CO	08003	1.90
ARAPAHOE	CO	08005	1.55
ARCHULETA	CO	08007	2.20
BACA	CO	08009	1.90
BENT	CO	08011	1.80
BOULDER	CO	08013	1.55
CHAFFEE	CO	08015	1.90
CHEYENNE	CO	08017	1.60
CLEAR CREEK	CO	08019	1.55
CONEJOS	CO	08021	1.90
COSTILLA	CO	08023	1.90
CROWLEY	CO	08025	1.80
CUSTER	CO	08027	1.90
DELTA	CO	08029	2.20
DENVER	CO	08031	1.55
DOLORES	CO	08033	2.20
DOUGLAS	CO	08035	1.55
EAGLE	CO	08037	1.80
ELBERT	CO	08039	1.55
EL PASO	CO	08041	1.80
FREMONT	CO	08043	1.90
GARFIELD	CO	08045	1.90
GILPIN	CO	08047	1.55
GRAND	CO	08049	1.55
GUNNISON	CO	08051	1.90
HINSDALE	CO	08053	2.20
HUERFANO	CO	08055	1.90
JACKSON	CO	08057	1.55
JEFFERSON	CO	08059	1.55
KIOWA	CO	08061	1.80
KIT CARSON	CO	08063	1.60
LAKE	CO	08065	1.90
LA PLATA	CO	08067	2.20
LARIMER	CO	08069	1.55
LAS ANIMAS	CO	08071	1.90
LINCOLN	CO	08073	1.60
LOGAN	CO	08075	1.40
MESA	CO	08077	2.20
MINERAL	CO	08079	2.20

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
MOFFAT	CO	08081	1.80
MONTEZUMA	CO	08083	2.20
MONTROSE	CO	08085	2.20
MORGAN	CO	08087	1.40
OTERO	CO	08089	1.80
OURAY	CO	08091	2.20
PARK	CO	08093	1.80
PHILLIPS	CO	08095	1.50
PITKIN	CO	08097	1.90
PROWERS	CO	08099	1.80
PUEBLO	CO	08101	1.80
RIO BLANCO	CO	08103	1.90
RIO GRANDE	CO	08105	1.90
ROUTT	CO	08107	1.80
SAGUACHE	CO	08109	1.90
SAN JUAN	CO	08111	2.20
SAN MIGUEL	CO	08113	2.20
SEDGWICK	CO	08115	1.40
SUMMIT	CO	08117	1.80
TELLER	CO	08119	1.80
WASHINGTON	CO	08121	1.50
WELD	CO	08123	1.40
YUMA	CO	08125	1.50
FAIRFIELD	CT	09001	2.50
HARTFORD	CT	09003	2.50
LITCHFIELD	CT	09005	2.30
MIDDLESEX	CT	09007	2.50
NEW HAVEN	CT	09009	2.30
NEW LONDON	CT	09011	2.60
TOLLAND	CT	09013	2.50
WINDHAM	CT	09015	2.60
KENT	DE	10001	2.20
NEW CASTLE	DE	10003	2.20
SUSSEX	DE	10005	2.20
DISTRICT OF COLUMBIA	DC	11001	2.05
ALACHUA	FL	12001	4.00
BAKER	FL	12003	3.80
BAY	FL	12005	3.40
BRADFORD	FL	12007	3.80
BREVARD	FL	12009	4.20
BROWARD	FL	12011	4.75
CALHOUN	FL	12013	3.40
CHARLOTTE	FL	12015	4.40
CITRUS	FL	12017	4.00
CLAY	FL	12019	3.80
COLLIER	FL	12021	4.75
COLUMBIA	FL	12023	3.80
DADE	FL	12025	4.75
DE SOTO	FL	12027	4.40
DIXIE	FL	12029	3.80
DUVAL	FL	12031	3.80
ESCAMBIA	FL	12033	3.30
FLAGLER	FL	12035	4.00
FRANKLIN	FL	12037	3.40
GADSDEN	FL	12039	3.40
GILCHRIST	FL	12041	3.80
GLADES	FL	12043	4.40
GULF	FL	12045	3.40
HAMILTON	FL	12047	3.60
HARDEE	FL	12049	4.40
HENDRY	FL	12051	4.75
HERNANDO	FL	12053	4.20
HIGHLANDS	FL	12055	4.40
HILLSBOROUGH	FL	12057	4.20
HOLMES	FL	12059	3.30
INDIAN RIVER	FL	12061	4.40
JACKSON	FL	12063	3.30
JEFFERSON	FL	12065	3.50
LAFAYETTE	FL	12067	3.80
LAKE	FL	12069	4.20
LEE	FL	12071	4.75
LEON	FL	12073	3.50

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
LEVY	FL	12075	4.00
LIBERTY	FL	12077	3.40
MADISON	FL	12079	3.60
MANATEE	FL	12081	4.40
MARION	FL	12083	4.00
MARTIN	FL	12085	4.40
MONROE	FL	12087	4.75
NASSAU	FL	12089	3.80
OKALOOSA	FL	12091	3.30
OKEECHOBEE	FL	12093	4.40
ORANGE	FL	12095	4.20
OSCEOLA	FL	12097	4.20
PALM BEACH	FL	12099	4.75
PASCO	FL	12101	4.20
PINELLAS	FL	12103	4.20
POLK	FL	12105	4.20
PUTNAM	FL	12107	4.00
ST. JOHNS	FL	12109	3.80
ST. LUCIE	FL	12111	4.40
SANTA ROSA	FL	12113	3.30
SARASOTA	FL	12115	4.40
SEMINOLE	FL	12117	4.20
SUMTER	FL	12119	4.20
SUWANNEE	FL	12121	3.80
TAYLOR	FL	12123	3.60
UNION	FL	12125	3.80
VOLUSIA	FL	12127	4.20
WAKULLA	FL	12129	3.50
WALTON	FL	12131	3.30
WASHINGTON	FL	12133	3.40
APPLING	GA	13001	3.30
ATKINSON	GA	13003	3.30
BACON	GA	13005	3.30
BAKER	GA	13007	3.30
BALDWIN	GA	13009	2.80
BANKS	GA	13011	2.70
BARROW	GA	13013	2.90
BARTOW	GA	13015	2.70
BEN HILL	GA	13017	3.30
BERRIEN	GA	13019	3.30
BIBB	GA	13021	2.80
BLECKLEY	GA	13023	3.10
BRANTLEY	GA	13025	3.60
BROOKS	GA	13027	3.50
BRYAN	GA	13029	3.30
BULLOCH	GA	13031	3.20
BURKE	GA	13033	2.80
BUTTS	GA	13035	2.90
CALHOUN	GA	13037	3.20
CAMDEN	GA	13039	3.60
CANDLER	GA	13043	3.20
CARROLL	GA	13045	2.90
CATOOSA	GA	13047	2.55
CHARLTON	GA	13049	3.60
CHATHAM	GA	13051	3.30
CHATTAHOOCHEE	GA	13053	3.10
CHATTOOGA	GA	13055	2.55
CHEROKEE	GA	13057	2.70
CLARKE	GA	13059	2.80
CLAY	GA	13061	3.20
CLAYTON	GA	13063	2.90
CLINCH	GA	13065	3.60
COBB	GA	13067	2.90
COFFEE	GA	13069	3.30
COLQUITT	GA	13071	3.30
COLUMBIA	GA	13073	2.80
COOK	GA	13075	3.30
COWETA	GA	13077	2.90
CRAWFORD	GA	13079	2.90
CRISP	GA	13081	3.20
DADE	GA	13083	2.55
DAWSON	GA	13085	2.70

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
DECATUR	GA	13087	3.30
DE KALB	GA	13089	2.90
DODGE	GA	13091	3.20
DOOLY	GA	13093	3.20
DOUGHERTY	GA	13095	3.20
DOUGLAS	GA	13097	2.90
EARLY	GA	13099	3.30
ECHOLS	GA	13101	3.60
EFFINGHAM	GA	13103	3.20
ELBERT	GA	13105	2.80
EMANUEL	GA	13107	3.10
EVANS	GA	13109	3.20
FANNIN	GA	13111	2.55
FAYETTE	GA	13113	2.90
FLOYD	GA	13115	2.55
FORSYTH	GA	13117	2.90
FRANKLIN	GA	13119	2.70
FULTON	GA	13121	2.90
GILMER	GA	13123	2.55
GLASCOCK	GA	13125	2.80
GLYNN	GA	13127	3.60
GORDON	GA	13129	2.55
GRADY	GA	13131	3.30
GREENE	GA	13133	2.80
GWINNETT	GA	13135	2.90
HABERSHAM	GA	13137	2.70
HALL	GA	13139	2.90
HANCOCK	GA	13141	2.80
HARALSON	GA	13143	2.70
HARRIS	GA	13145	2.90
HART	GA	13147	2.70
HEARD	GA	13149	2.90
HENRY	GA	13151	2.90
HOUSTON	GA	13153	3.10
IRWIN	GA	13155	3.30
JACKSON	GA	13157	2.80
JASPER	GA	13159	2.80
JEFF DAVIS	GA	13161	3.30
JEFFERSON	GA	13163	2.80
JENKINS	GA	13165	3.10
JOHNSON	GA	13167	3.10
JONES	GA	13169	2.80
LAMAR	GA	13171	2.90
LANIER	GA	13173	3.60
LAURENS	GA	13175	3.10
LEE	GA	13177	3.20
LIBERTY	GA	13179	3.30
LINCOLN	GA	13181	2.80
LONG	GA	13183	3.30
LOWNDES	GA	13185	3.60
LUMPKIN	GA	13187	2.70
MCDUFFIE	GA	13189	2.80
MCINTOSH	GA	13191	3.30
MACON	GA	13193	3.10
MADISON	GA	13195	2.80
MARION	GA	13197	3.10
MERIWETHER	GA	13199	2.90
MILLER	GA	13201	3.30
MITCHELL	GA	13205	3.30
MONROE	GA	13207	2.90
MONTGOMERY	GA	13209	3.20
MORGAN	GA	13211	2.80
MURRAY	GA	13213	2.55
MUSCOGEE	GA	13215	3.10
NEWTON	GA	13217	2.80
OCONEE	GA	13219	2.80
OGLETHORPE	GA	13221	2.80
PAULDING	GA	13223	2.90
PEACH	GA	13225	2.90
PICKENS	GA	13227	2.70
PIERCE	GA	13229	3.30
PIKE	GA	13231	2.90

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
POLK	GA	13233	2.70
PULASKI	GA	13235	3.20
PUTNAM	GA	13237	2.80
QUITMAN	GA	13239	3.20
RABUN	GA	13241	2.55
RANDOLPH	GA	13243	3.20
RICHMOND	GA	13245	2.80
ROCKDALE	GA	13247	2.90
SCHLEY	GA	13249	3.10
SCREVEN	GA	13251	3.10
SEMINOLE	GA	13253	3.30
SPALDING	GA	13255	2.90
STEPHENS	GA	13257	2.70
STEWART	GA	13259	3.10
SUMTER	GA	13261	3.20
TALBOT	GA	13263	2.90
TALIAFERRO	GA	13265	2.80
TATTNALL	GA	13267	3.20
TAYLOR	GA	13269	2.90
TELFAIR	GA	13271	3.20
TERRELL	GA	13273	3.20
THOMAS	GA	13275	3.50
TIFT	GA	13277	3.30
TOOMBS	GA	13279	3.20
TOWNS	GA	13281	2.55
TREUTLEN	GA	13283	3.20
TROUP	GA	13285	2.90
TURNER	GA	13287	3.30
TWIGGS	GA	13289	2.80
UNION	GA	13291	2.55
UPSON	GA	13293	2.90
WALKER	GA	13295	2.55
WALTON	GA	13297	2.80
WARE	GA	13299	3.60
WARREN	GA	13301	2.80
WASHINGTON	GA	13303	2.80
WAYNE	GA	13305	3.30
WEBSTER	GA	13307	3.20
WHEELER	GA	13309	3.20
WHITE	GA	13311	2.70
WHITFIELD	GA	13313	2.55
WILCOX	GA	13315	3.20
WILKES	GA	13317	2.80
WILKINSON	GA	13319	2.80
WORTH	GA	13321	3.30
ADA	ID	16001	1.35
ADAMS	ID	16003	1.35
BANNOCK	ID	16005	1.40
BEAR LAKE	ID	16007	1.40
BENEWAH	ID	16009	1.35
BINGHAM	ID	16011	1.35
BLAINE	ID	16013	1.35
BOISE	ID	16015	1.35
BONNER	ID	16017	1.35
BONNEVILLE	ID	16019	1.35
BOUNDARY	ID	16021	1.35
BUTTE	ID	16023	1.35
CAMAS	ID	16025	1.35
CANYON	ID	16027	1.35
CARIBOU	ID	16029	1.40
CASSIA	ID	16031	1.40
CLARK	ID	16033	1.40
CLEARWATER	ID	16035	1.40
CUSTER	ID	16037	1.35
ELMORE	ID	16039	1.35
FRANKLIN	ID	16041	1.40
FREMONT	ID	16043	1.40
GEM	ID	16045	1.35
GOODING	ID	16047	1.35
IDAHO	ID	16049	1.40
JEFFERSON	ID	16051	1.35
JEROME	ID	16053	1.35

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
KOOTENAI	ID	16055	1.35
LATAH	ID	16057	1.35
LEMHI	ID	16059	1.40
LEWIS	ID	16061	1.35
LINCOLN	ID	16063	1.35
MADISON	ID	16065	1.40
MINIDOKA	ID	16067	1.35
NEZ PERCE	ID	16069	1.35
ONEIDA	ID	16071	1.40
OWYHEE	ID	16073	1.35
PAYETTE	ID	16075	1.35
POWER	ID	16077	1.40
SHOSHONE	ID	16079	1.40
TETON	ID	16081	1.40
TWIN FALLS	ID	16083	1.35
VALLEY	ID	16085	1.35
WASHINGTON	ID	16087	1.35
ADAMS	IL	17001	2.00
ALEXANDER	IL	17003	2.10
BOND	IL	17005	2.00
BOONE	IL	17007	1.95
BROWN	IL	17009	2.00
BUREAU	IL	17011	2.00
CALHOUN	IL	17013	2.00
CARROLL	IL	17015	1.95
CASS	IL	17017	2.00
CHAMPAIGN	IL	17019	2.00
CHRISTIAN	IL	17021	2.00
CLARK	IL	17023	2.00
CLAY	IL	17025	2.00
CLINTON	IL	17027	2.00
COLES	IL	17029	2.00
COOK	IL	17031	1.95
CRAWFORD	IL	17033	2.00
CUMBERLAND	IL	17035	2.00
DE KALB	IL	17037	1.95
DE WITT	IL	17039	2.00
DOUGLAS	IL	17041	2.00
DU PAGE	IL	17043	1.95
EDGAR	IL	17045	2.00
EDWARDS	IL	17047	2.00
EFFINGHAM	IL	17049	2.00
FAYETTE	IL	17051	2.00
FORD	IL	17053	2.00
FRANKLIN	IL	17055	2.10
FULTON	IL	17057	2.00
GALLATIN	IL	17059	2.10
GREENE	IL	17061	2.00
GRUNDY	IL	17063	2.00
HAMILTON	IL	17065	2.10
HANCOCK	IL	17067	2.00
HARDIN	IL	17069	2.10
HENDERSON	IL	17071	2.00
HENRY	IL	17073	2.00
IROQUOIS	IL	17075	2.00
JACKSON	IL	17077	2.10
JASPER	IL	17079	2.00
JEFFERSON	IL	17081	2.00
JERSEY	IL	17083	2.00
JO DAVIESS	IL	17085	1.95
JOHNSON	IL	17087	2.10
KANE	IL	17089	1.95
KANKAKEE	IL	17091	2.00
KENDALL	IL	17093	2.00
KNOX	IL	17095	2.00
LAKE	IL	17097	1.95
LA SALLE	IL	17099	2.00
LAWRENCE	IL	17101	2.00
LEE	IL	17103	1.95
LIVINGSTON	IL	17105	2.00
LOGAN	IL	17107	2.00
MCDONOUGH	IL	17109	2.00

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MCHENRY	IL	17111	1.95
MCLEAN	IL	17113	2.00
MACON	IL	17115	2.00
MACOUPIN	IL	17117	2.00
MADISON	IL	17119	2.00
MARION	IL	17121	2.00
MARSHALL	IL	17123	2.00
MASON	IL	17125	2.00
MASSAC	IL	17127	2.10
MENARD	IL	17129	2.00
MERCER	IL	17131	2.00
MONROE	IL	17133	2.10
MONTGOMERY	IL	17135	2.00
MORGAN	IL	17137	2.00
MOULTRIE	IL	17139	2.00
OGLE	IL	17141	1.95
PEORIA	IL	17143	2.00
PERRY	IL	17145	2.10
PIATT	IL	17147	2.00
PIKE	IL	17149	2.00
POPE	IL	17151	2.10
PULASKI	IL	17153	2.10
PUTNAM	IL	17155	2.00
RANDOLPH	IL	17157	2.10
RICHLAND	IL	17159	2.00
ROCK ISLAND	IL	17161	2.00
ST. CLAIR	IL	17163	2.10
SALINE	IL	17165	2.10
SANGAMON	IL	17167	2.00
SCHUYLER	IL	17169	2.00
SCOTT	IL	17171	2.00
SHELBY	IL	17173	2.00
STARK	IL	17175	2.00
STEPHENSON	IL	17177	1.95
TAZEWELL	IL	17179	2.00
UNION	IL	17181	2.10
VERMILION	IL	17183	2.00
WABASH	IL	17185	2.00
WARREN	IL	17187	2.00
WASHINGTON	IL	17189	2.10
WAYNE	IL	17191	2.00
WHITE	IL	17193	2.00
WHITESIDE	IL	17195	1.95
WILL	IL	17197	2.00
WILLIAMSON	IL	17199	2.10
WINNEBAGO	IL	17201	1.95
WOODFORD	IL	17203	2.00
ADAMS	IN	18001	2.00
ALLEN	IN	18003	1.80
BARTHOLOMEW	IN	18005	2.05
BENTON	IN	18007	2.00
BLACKFORD	IN	18009	2.00
BOONE	IN	18011	2.00
BROWN	IN	18013	2.05
CARROLL	IN	18015	2.00
CASS	IN	18017	2.00
CLARK	IN	18019	1.95
CLAY	IN	18021	2.00
CLINTON	IN	18023	2.00
CRAWFORD	IN	18025	2.10
DAVIESS	IN	18027	2.05
DEARBORN	IN	18029	1.95
DECATUR	IN	18031	1.95
DE KALB	IN	18033	1.80
DELAWARE	IN	18035	2.00
DUBOIS	IN	18037	2.10
ELKHART	IN	18039	1.80
FAYETTE	IN	18041	2.00
FLOYD	IN	18043	1.95
FOUNTAIN	IN	18045	2.00
FRANKLIN	IN	18047	1.95
FULTON	IN	18049	2.00

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
GIBSON	IN	18051	2.10
GRANT	IN	18053	2.00
GREENE	IN	18055	2.05
HAMILTON	IN	18057	2.00
HANCOCK	IN	18059	2.00
HARRISON	IN	18061	1.95
HENDRICKS	IN	18063	2.00
HENRY	IN	18065	2.00
HOWARD	IN	18067	2.00
HUNTINGTON	IN	18069	2.00
JACKSON	IN	18071	2.05
JASPER	IN	18073	2.00
JAY	IN	18075	2.00
JEFFERSON	IN	18077	1.95
JENNINGS	IN	18079	1.95
JOHNSON	IN	18081	2.00
KNOX	IN	18083	2.05
KOSCIUSKO	IN	18085	1.80
LAGRANGE	IN	18087	1.80
LAKE	IN	18089	1.95
LA PORTE	IN	18091	1.80
LAWRENCE	IN	18093	2.05
MADISON	IN	18095	2.00
MARION	IN	18097	2.00
MARSHALL	IN	18099	1.80
MARTIN	IN	18101	2.05
MIAMI	IN	18103	2.00
MONROE	IN	18105	2.05
MONTGOMERY	IN	18107	2.00
MORGAN	IN	18109	2.00
NEWTON	IN	18111	2.00
NOBLE	IN	18113	1.80
OHIO	IN	18115	1.95
ORANGE	IN	18117	2.05
OWEN	IN	18119	2.00
PARKE	IN	18121	2.00
PERRY	IN	18123	2.10
PIKE	IN	18125	2.10
PORTER	IN	18127	1.95
POSEY	IN	18129	2.10
PULASKI	IN	18131	2.00
PUTNAM	IN	18133	2.00
RANDOLPH	IN	18135	2.00
RIPLEY	IN	18137	1.95
RUSH	IN	18139	2.00
ST. JOSEPH	IN	18141	1.80
SCOTT	IN	18143	1.95
SHELBY	IN	18145	2.00
SPENCER	IN	18147	2.10
STARKE	IN	18149	1.80
STEUBEN	IN	18151	1.80
SULLIVAN	IN	18153	2.05
SWITZERLAND	IN	18155	1.95
TIPPECANOE	IN	18157	2.00
TIPTON	IN	18159	2.00
UNION	IN	18161	2.00
VANDERBURGH	IN	18163	2.10
VERMILLION	IN	18165	2.00
VIGO	IN	18167	2.00
WABASH	IN	18169	2.00
WARREN	IN	18171	2.00
WARRICK	IN	18173	2.10
WASHINGTON	IN	18175	1.95
WAYNE	IN	18177	2.00
WELLS	IN	18179	2.00
WHITE	IN	18181	2.00
WHITLEY	IN	18183	1.80
ADAIR	IA	19001	1.90
ADAMS	IA1	19003	1.90
ALLAMAKEE	IA	19005	1.70
APPANOOSE	IA	19007	1.90
AUDUBON	IA	19009	1.90

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
BENTON	IA	19011	1.95
BLACK HAWK	IA	19013	1.80
BOONE	IA	19015	1.90
BREMER	IA	19017	1.80
BUCHANAN	IA	19019	1.80
BUENA VISTA	IA	19021	1.80
BUTLER	IA	19023	1.80
CALHOUN	IA	19025	1.80
CARROLL	IA	19027	1.90
CASS	IA	19029	1.90
CEDAR	IA	19031	1.95
CERRO GORDO	IA	19033	1.70
CHEROKEE	IA	19035	1.80
CHICKASAW	IA	19037	1.70
CLARKE	IA	19039	1.90
CLAY	IA	19041	1.70
CLAYTON	IA	19043	1.70
CLINTON	IA	19045	1.95
CRAWFORD	IA	19047	1.90
DALLAS	IA	19049	1.90
DAVIS	IA	19051	1.90
DECATUR	IA	19053	1.90
DELAWARE	IA	19055	1.80
DES MOINES	IA	19057	1.90
DICKINSON	IA	19059	1.70
DUBUQUE	IA	19061	1.80
EMMET	IA	19063	1.70
FAYETTE	IA	19065	1.70
FLOYD	IA	19067	1.70
FRANKLIN	IA	19069	1.80
FREMONT	IA	19071	1.90
GREENE	IA	19073	1.90
GRUNDY	IA1	9075	1.80
GUTHRIE	IA	19077	1.90
HAMILTON	IA	19079	1.80
HANCOCK	IA	19081	1.70
HARDIN	IA	19083	1.80
HARRISON	IA	19085	1.90
HENRY	IA	19087	1.90
HOWARD	IA	19089	1.70
HUMBOLDT	IA	19091	1.80
IDA	IA	19093	1.80
IOWA	IA	19095	1.95
JACKSON	IA	19097	1.95
JASPER	IA	19099	1.95
JEFFERSON	IA	19101	1.90
JOHNSON	IA	19103	1.95
JONES	IA	19105	1.95
KEOKUK	IA	19107	1.90
KOSSUTH	IA	19109	1.70
LEE	IA	19111	1.90
LINN	IA	19113	1.95
LOUISA	IA	19115	1.90
LUCAS	IA	19117	1.90
LYON	IA	19119	1.70
MADISON	IA	19121	1.90
MAHASKA	IA	19123	1.90
MARION	IA	19125	1.90
MARSHALL	IA	19127	1.95
MILLS	IA	19129	1.90
MITCHELL	IA	19131	1.70
MONONA	IA	19133	1.80
MONROE	IA	19135	1.90
MONTGOMERY	IA	19137	1.90
MUSCATINE	IA	19139	1.90
O'BRIEN	IA	19141	1.70
OSCEOLA	IA	19143	1.70
PAGE	IA	19145	1.90
PALO ALTO	IA	19147	1.70
PLYMOUTH	IA	19149	1.70
POCAHONTAS	IA	19151	1.80
POLK	IA	19153	1.90

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POTTAWATTAMIE	IA	19155	1.90
POWESHIEK	IA	19157	1.95
RINGGOLD	IA	19159	1.90
SAC	IA	19161	1.80
SCOTT	IA	19163	1.95
SHELBY	IA	19165	1.90
SIOUX	IA	19167	1.70
STORY	IA	19169	1.95
TAMA	IA	19171	1.95
TAYLOR	IA	19173	1.90
UNION	IA	19175	1.90
VAN BUREN	IA	19177	1.90
WAPELLO	IA	19179	1.90
WARREN	IA	19181	1.90
WASHINGTON	IA	19183	1.90
WAYNE	IA	19185	1.90
WEBSTER	IA	19187	1.80
WINNEBAGO	IA	19189	1.70
WINNESHIEK	IA	19191	1.70
WOODBURY	IA	19193	1.80
WORTH	IA	19195	1.70
WRIGHT	IA	19197	1.80
ALLEN	KS	20001	1.70
ANDERSON	KS	20003	1.70
ATCHISON	KS	20005	1.90
BARBER	KS	20007	1.90
BARTON	KS	20009	1.90
BOURBON	KS	20011	1.70
BROWN	KS	20013	1.90
BUTLER	KS	20015	1.70
CHASE	KS	20017	1.70
CHAUTAUQUA	KS	20019	1.70
CHEROKEE	KS	20021	1.70
CHEYENNE	KS	20023	1.60
CLARK	KS	20025	1.90
CLAY	KS	20027	1.90
CLOUD	KS	20029	1.80
COFFEY	KS	20031	1.70
COMANCHE	KS	20033	1.90
COWLEY	KS	20035	1.70
CRAWFORD	KS	20037	1.70
DECATUR	KS	20039	1.60
DICKINSON	KS	20041	1.90
DONIPHAN	KS	20043	1.90
DOUGLAS	KS	20045	1.70
EDWARDS	KS	20047	1.90
ELK	KS	20049	1.70
ELLIS	KS	20051	1.80
ELLSWORTH	KS	20053	1.90
FINNEY	KS	20055	1.80
FORD	KS	20057	1.90
FRANKLIN	KS	20059	1.70
GEARY	KS	20061	1.90
GOVE	KS	20063	1.60
GRAHAM	KS	20065	1.60
GRANT	KS	20067	1.90
GRAY	KS	20069	1.90
GREELEY	KS	20071	1.80
GREENWOOD	KS	20073	1.70
HAMILTON	KS	20075	1.80
HARPER	KS	20077	1.70
HARVEY	KS	20079	1.70
HASKELL	KS	20081	1.90
HODGEMAN	KS	20083	1.80
JACKSON	KS	20085	1.90
JEFFERSON	KS	20087	1.90
JEWELL	KS	20089	1.80
JOHNSON	KS	20091	1.90
KEARNY	KS	20093	1.80
KINGMAN	KS	20095	1.70
KIOWA	KS	20097	1.90
LABETTE	KS	20099	1.70

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
LANE	KS	20101	1.80
LEAVENWORTH	KS	20103	1.90
LINCOLN	KS	20105	1.80
LINN	KS	20107	1.70
LOGAN	KS	20109	1.60
LYON	KS	20111	1.70
MCPHERSON	KS	20113	1.90
MARION	KS	20115	1.70
MARSHALL	KS	20117	1.90
MEADE	KS	20119	1.90
MIAMI	KS	20121	1.70
MITCHELL	KS	20123	1.80
MONTGOMERY	KS	20125	1.70
MORRIS	KS	20127	1.90
MORTON	KS	20129	1.90
NEMAHA	KS	20131	1.90
NEOSHO	KS	20133	1.70
NESS	KS	20135	1.80
NORTON	KS	20137	1.60
OSAGE	KS	20139	1.70
OSBORNE	KS	20141	1.80
OTTAWA	KS	20143	1.90
PAWNEE	KS	20145	1.90
PHILLIPS	KS	20147	1.60
POTTAWATOMIE	KS	20149	1.90
PRATT	KS	20151	1.90
RAWLINS	KS	20153	1.60
RENO	KS	20155	1.70
REPUBLIC	KS	20157	1.80
RICE	KS	20159	1.90
RILEY	KS	20161	1.90
ROOKS	KS	20163	1.60
RUSH	KS	20165	1.80
RUSSELL	KS	20167	1.80
SALINE	KS	20169	1.90
SCOTT	KS	20171	1.80
SEDGWICK	KS	20173	1.70
SEWARD	KS	20175	1.90
SHAWNEE	KS	20177	1.90
SHERIDAN	KS	20179	1.60
SHERMAN	KS	20181	1.60
SMITH	KS	20183	1.60
STAFFORD	KS	20185	1.90
STANTON	KS	20187	1.90
STEVENS	KS	20189	1.90
SUMNER	KS	20191	1.70
THOMAS	KS	20193	1.60
TREGO	KS	20195	1.80
WABAUNSEE	KS	20197	1.90
WALLACE	KS	20199	1.60
WASHINGTON	KS	20201	1.90
WICHITA	KS	20203	1.80
WILSON	KS	20205	1.70
WOODSON	KS	20207	1.70
WYANDOTTE	KS	20209	1.90
ADAIR	KY	21001	1.95
ALLEN	KY	21003	2.05
ANDERSON	KY	21005	1.95
BALLARD	KY	21007	2.30
BARREN	KY	21009	2.05
BATH	KY	21011	2.05
BELL	KY	21013	2.15
BOONE	KY	21015	1.95
BOURBON	KY	21017	2.05
BOYD	KY	21019	2.20
BOYLE	KY	21021	1.95
BRACKEN	KY	21023	2.05
BREATHITT	KY	21025	2.15
BRECKINRIDGE	KY	21027	2.10
BULLITT	KY	21029	1.95
BUTLER	KY	21031	2.20
CALDWELL	KY	21033	2.30

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
CALLOWAY	KY	21035	2.30
CAMPBELL	KY	21037	2.05
CARLISLE	KY	21039	2.30
CARROLL	KY	21041	1.95
CARTER	KY	21043	2.20
CASEY	KY	21045	1.95
CHRISTIAN	KY	21047	2.20
CLARK	KY	21049	2.05
CLAY	KY	21051	2.15
CLINTON	KY	21053	2.15
CRITTENDEN	KY	21055	2.30
CUMBERLAND	KY	21057	2.05
DAVIESS	KY	21059	2.10
EDMONSON	KY	21061	2.05
ELLIOTT	KY	21063	2.05
ESTILL	KY	21065	2.05
FAYETTE	KY	21067	2.05
FLEMING	KY	21069	2.05
FLOYD	KY	21071	2.15
FRANKLIN	KY	21073	1.95
FULTON	KY	21075	2.30
GALLATIN	KY	21077	1.95
GARRARD	KY	21079	1.95
GRANT	KY	21081	1.95
GRAVES	KY	21083	2.30
GRAYSON	KY	21085	2.10
GREEN	KY	21087	1.95
GREENUP	KY	21089	2.20
HANCOCK	KY	21091	2.10
HARDIN	KY	21093	1.95
HARLAN	KY	21095	2.15
HARRISON	KY	21097	2.05
HART	KY	21099	1.95
HENDERSON	KY	21101	2.10
HENRY	KY	21103	1.95
HICKMAN	KY	21105	2.30
HOPKINS	KY	21107	2.20
JACKSON	KY	21109	1.95
JEFFERSON	KY	21111	1.95
JESSAMINE	KY	21113	1.95
JOHNSON	KY	21115	2.15
KENTON	KY	21117	2.05
KNOTT	KY	21119	2.15
KNOX	KY	21121	2.15
LARUE	KY	21123	1.95
LAUREL	KY	21125	2.15
LAWRENCE	KY	21127	2.15
LEE	KY	21129	2.05
LESLIE	KY	21131	2.15
LETCHER	KY	21133	2.15
LEWIS	KY	21135	2.05
LINCOLN	KY	21137	1.95
LIVINGSTON	KY	21139	2.30
LOGAN	KY	21141	2.20
LYON	KY	21143	2.30
MCCRACKEN	KY	21145	2.30
MCCREARY	KY	21147	2.15
MCLEAN	KY	21149	2.10
MADISON	KY	21151	2.05
MAGOFFIN	KY	21153	2.15
MARION	KY	21155	1.95
MARSHALL	KY	21157	2.30
MARTIN	KY	21159	2.15
MASON	KY	21161	2.05
MEADE	KY	21163	1.95
MENIFEE	KY	21165	2.05
MERCER	KY	21167	1.95
METCALFE	KY	21169	2.05
MONROE	KY	21171	2.05
MONTGOMERY	KY	21173	2.05
MORGAN	KY	21175	2.05
MUHLENBERG	KY	21177	2.20

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
NELSON	KY	21179	1.95
NICHOLAS	KY	21181	2.05
OHIO	KY	21183	2.10
OLDHAM	KY	21185	1.95
OWEN	KY	21187	1.95
OWSLEY	KY	21189	2.15
PENDLETON	KY	21191	2.05
PERRY	KY	21193	2.15
PIKE	KY	21195	2.15
POWELL	KY	21197	2.05
PULASKI	KY	21199	2.15
ROBERTSON	KY	21201	2.05
ROCKCASTLE	KY	21203	1.95
ROWAN	KY	21205	2.05
RUSSELL	KY	21207	1.95
SCOTT	KY	21209	2.05
SHELBY	KY	21211	1.95
SIMPSON	KY	21213	2.05
SPENCER	KY	21215	1.95
TAYLOR	KY	21217	1.95
TODD	KY	21219	2.20
TRIGG	KY	21221	2.30
TRIMBLE	KY	21223	1.95
UNION	KY	21225	2.10
WARREN	KY	21227	2.05
WASHINGTON	KY	21229	1.95
WAYNE	KY	21231	2.15
WEBSTER	KY	21233	2.10
WHITLEY	KY	21235	2.15
WOLFE	KY	21237	2.05
WOODFORD	KY	21239	1.95
ACADIA	LA	22001	3.05
ALLEN	LA	22003	2.85
ASCENSION	LA	22005	2.85
ASSUMPTION	LA	22007	3.05
AVOYELLES	LA	22009	2.85
BEAUREGARD	LA	22011	2.85
BIENVILLE	LA	22013	2.65
BOSSIER	LA	22015	2.35
CADDO	LA	22017	2.35
CALCASIEU	LA	22019	3.05
CALDWELL	LA	22021	2.75
CAMERON	LA	22023	3.05
CATAHOULA	LA	22025	2.85
CLAIBORNE	LA	22027	2.65
CONCORDIA	LA	22029	2.85
DE SOTO	LA	22031	2.65
EAST BATON ROUGE	LA	22033	2.85
EAST CARROLL	LA	22035	2.75
EAST FELICIANA	LA	22037	2.85
EVANGELINE	LA	22039	2.85
FRANKLIN	LA	22041	2.75
GRANT	LA	22043	2.75
IBERIA	LA	22045	3.05
IBERVILLE	LA	22047	2.85
JACKSON	LA	22049	2.75
JEFFERSON	LA	22051	3.05
JEFFERSON DAVIS	LA	22053	3.05
LAFAYETTE	LA	22055	3.05
LAFOURCHE	LA	22057	3.05
LA SALLE	LA	22059	2.75
LINCOLN	LA	22061	2.65
LIVINGSTON	LA	22063	2.85
MADISON	LA	22065	2.75
MOREHOUSE	LA	22067	2.75
NATCHITOCHES	LA	22069	2.75
ORLEANS	LA	22071	3.05
OUACHITA	LA	22073	2.75
PLAQUEMINES	LA	22075	3.05
POINTE COUPEE	LA	22077	2.85
RAPIDES	LA	22079	2.85
RED RIVER	LA	22081	2.65

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
RICHLAND	LA	22083	2.75
SABINE	LA	22085	2.75
ST. BERNARD	LA	22087	3.05
ST. CHARLES	LA	22089	3.05
ST. HELENA	LA	22091	2.85
ST. JAMES	LA	22093	2.85
ST. JOHN THE BAPTIST	LA	22095	2.85
ST. LANDRY	LA	22097	3.05
ST. MARTIN	LA	22099	3.05
ST. MARY	LA	22101	3.05
ST. TAMMANY	LA	22103	2.85
TANGIPAHOA	LA	22105	2.85
TENSAS	LA	22107	2.85
TERREBONNE	LA	22109	3.05
UNION	LA	22111	2.65
VERMILION	LA	22113	3.05
VERNON	LA	22115	2.85
WASHINGTON	LA	22117	2.85
WEBSTER	LA	22119	2.35
WEST BATON ROUGE	LA	22121	2.85
WEST CARROLL	LA	22123	2.75
WEST FELICIANA	LA	22125	2.85
WINN	LA	22127	2.75
ANDROSCOGGIN	ME	23001	2.20
AROOSTOOK	ME	23003	2.15
CUMBERLAND	ME	23005	2.30
FRANKLIN	ME	23007	2.15
HANCOCK	ME	23009	2.15
KENNEBEC	ME	23011	2.20
KNOX	ME	23013	2.20
LINCOLN	ME	23015	2.20
OXFORD	ME	23017	2.15
PENOBSCOT	ME	23019	2.15
PISCATAQUIS	ME	23021	2.15
SAGADAHOC	ME	23023	2.30
SOMERSET	ME	23025	2.15
WALDO	ME	23027	2.20
WASHINGTON	ME	23029	2.15
YORK	ME	23031	2.45
ALLEGANY	MD	24001	2.05
ANNE ARUNDEL	MD	24003	2.05
BALTIMORE	MD	24005	2.05
CALVERT	MD	24009	2.05
CAROLINE	MD	24011	2.10
CARROLL	MD	24013	2.05
CECIL	MD	24015	2.10
CHARLES	MD	24017	2.05
DORCHESTER	MD	24019	2.10
FREDERICK	MD	24021	2.05
GARRETT	MD	24023	2.05
HARFORD	MD	24025	2.05
HOWARD	MD	24027	2.05
KENT	MD	24029	2.10
MONTGOMERY	MD	24031	2.05
PRINCE GEORGE'S	MD	24033	2.05
QUEEN ANNE'S	MD	24035	2.10
ST. MARY'S	MD	24037	2.05
SOMERSET	MD	24039	2.10
TALBOT	MD	24041	2.10
WASHINGTON	MD	24043	2.05
WICOMICO	MD	24045	2.10
WORCESTER	MD	24047	2.10
BALTIMORE CITY	MD	24510	2.05
BARNSTABLE	MA	25001	2.75
BERKSHIRE	MA	25003	2.30
BRISTOL	MA	25005	2.75
DUKES	MA	25007	2.75
ESSEX	MA	25009	2.75
FRANKLIN	MA	25011	2.40
HAMPDEN	MA	25013	2.40
HAMPSHIRE	MA	25015	2.40
MIDDLESEX	MA	25017	2.75

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
NANTUCKET	MA	25019	2.75
NORFOLK	MA	25021	2.75
PLYMOUTH	MA	25023	2.75
SUFFOLK	MA	25025	2.75
WORCESTER	MA	25027	2.60
ALCONA	MI	26001	1.50
ALGER	MI	26003	1.60
ALLEGAN	MI	26005	1.80
ALPENA	MI	26007	1.35
ANTRIM	MI	26009	1.35
ARENAC	MI	26011	1.70
BARAGA	MI	26013	1.50
BARRY	MI	26015	1.80
BAY	MI	26017	1.70
BENZIE	MI	26019	1.50
BERRIEN	MI	26021	1.80
BRANCH	MI	26023	1.80
CALHOUN	MI	26025	1.80
CASS	MI	26027	1.80
CHARLEVOIX	MI	26029	1.35
CHEBOYGAN	MI	26031	1.35
CHIPPEWA	MI	26033	1.70
CLARE	MI	26035	1.70
CLINTON	MI	26037	1.80
CRAWFORD	MI	26039	1.50
DELTA	MI	26041	1.60
DICKINSON	MI	26043	1.40
EATON	MI	26045	1.80
EMMET	MI	26047	1.35
GENESEE	MI	26049	1.85
GLADWIN	MI	26051	1.70
GOGEBIC	MI	26053	1.40
GRAND TRAVERSE	MI	26055	1.50
GRATIOT	MI	26057	1.70
HILLSDALE	MI	26059	1.80
HOUGHTON	MI	26061	1.50
HURON	MI	26063	1.85
INGHAM	MI	26065	1.80
IONIA	MI	26067	1.80
IOSCO	MI	26069	1.50
IRON	MI	26071	1.40
ISABELLA	MI	26073	1.70
JACKSON	MI	26075	1.80
KALAMAZOO	MI	26077	1.80
KALKASKA	MI	26079	1.50
KENT	MI	26081	1.70
KEWEENAW	MI	26083	1.50
LAKE	MI	26085	1.70
LAPEER	MI	26087	1.85
LEELANAU	MI	26089	1.50
LENAWEE	MI	26091	1.80
LIVINGSTON	MI	26093	1.85
LUCE	MI	26095	1.70
MACKINAC	MI	26097	1.70
MACOMB	MI	26099	1.85
MANISTEE	MI	26101	1.50
MARQUETTE	MI	26103	1.50
MASON	MI	26105	1.70
MECOSTA	MI	26107	1.70
MENOMINEE	MI	26109	1.50
MIDLAND	MI	26111	1.70
MISSAUKEE	MI	26113	1.50
MONROE	MI	26115	1.85
MONTCALM	MI	26117	1.70
MONTMORENCY	MI	26119	1.35
MUSKEGON	MI	26121	1.70
NEWAYGO	MI	26123	1.70
OAKLAND	MI	26125	1.85
OCEANA	MI	26127	1.70
OGEMAW	MI	26129	1.50
ONTONAGON	MI	26131	1.40
OSCEOLA	MI	26133	1.70

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
OSCODA	MI	26135	1.50
OTSEGO	MI	26137	1.35
OTTAWA	MI	26139	1.70
PRESQUE ISLE	MI	26141	1.35
ROSCOMMON	MI	26143	1.50
SAGINAW	MI	26145	1.85
ST. CLAIR	MI	26147	1.85
ST. JOSEPH	MI	26149	1.80
SANILAC	MI	26151	1.85
SCHOOLCRAFT	MI	26153	1.60
SHIAWASSEE	MI	26155	1.85
TUSCOLA	MI	26157	1.85
VAN BUREN	MI	26159	1.80
WASHTENAW	MI	26161	1.85
WAYNE	MI	26163	1.85
WEXFORD	MI	26165	1.50
AITKIN	MN	27001	1.30
ANOKA	MN	27003	1.60
BECKER	MN	27005	1.40
BELTRAMI	MN	27007	1.10
BENTON	MN	27009	1.50
BIG STONE	MN	27011	1.50
BLUE EARTH	MN	27013	1.60
BROWN	MN	27015	1.60
CARLTON	MN	27017	1.65
CARVER	MN	27019	1.60
CASS	MN	27021	1.30
CHIPPEWA	MN	27023	1.50
CHISAGO	MN	27025	1.60
CLAY	MN	27027	1.40
CLEARWATER	MN	27029	1.10
COOK	MN	27031	1.65
COTTONWOOD	MN	27033	1.60
CROW WING	MN	27035	1.30
DAKOTA	MN	27037	1.60
DODGE	MN	27039	1.60
DOUGLAS	MN	27041	1.50
FARIBAULT	MN	27043	1.60
FILLMORE	MN	27045	1.60
FREEBORN	MN	27047	1.60
GOODHUE	MN	27049	1.60
GRANT	MN	27051	1.50
HENNEPIN	MN	27053	1.60
HOUSTON	MN	27055	1.60
HUBBARD	MN	27057	1.30
ISANTI	MN	27059	1.60
ITASCA	MN	27061	1.30
JACKSON	MN	27063	1.60
KANABEC	MN	27065	1.50
KANDIYOHI	MN	27067	1.50
KITTSON	MN	27069	1.10
KOOCHICHING	MN	27071	1.30
LAC QUI PARLE	MN	27073	1.50
LAKE	MN	27075	1.65
LAKE OF THE WOODS	MN	27077	1.10
LE SUEUR	MN	27079	1.60
LINCOLN	MN	27081	1.50
LYON	MN	27083	1.50
MCLEOD	MN	27085	1.60
MAHNOMEN	MN	27087	1.40
MARSHALL	MN	27089	1.10
MARTIN	MN	27091	1.60
MEEKER	MN	27093	1.60
MILLE LACS	MN	27095	1.50
MORRISON	MN	27097	1.50
MOWER	MN	27099	1.60
MURRAY	MN	27101	1.60
NICOLLET	MN	27103	1.60
NOBLES	MN	27105	1.60
NORMAN	MN	27107	1.40
OLMSTED	MN	27109	1.60
OTTER TAIL	MN	27111	1.40

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
PENNINGTON	MN	27113	1.10
PINE	MN	27115	1.65
PIPESTONE	MN	27117	1.60
POLK	MN	27119	1.40
POPE	MN	27121	1.50
RAMSEY	MN	27123	1.60
RED LAKE	MN	27125	1.10
REDWOOD	MN	27127	1.60
RENVILLE	MN	27129	1.60
RICE	MN	27131	1.60
ROCK	MN	27133	1.60
ROSEAU	MN	27135	1.10
ST. LOUIS	MN	27137	1.65
SCOTT	MN	27139	1.60
SHERBURNE	MN	27141	1.60
SIBLEY	MN	27143	1.60
STEARNS	MN	27145	1.50
STEELE	MN	27147	1.60
STEVENS	MN	27149	1.50
SWIFT	MN	27151	1.50
TODD	MN	27153	1.50
TRAVERSE	MN	27155	1.50
WABASHA	MN	27157	1.60
WADENA	MN	27159	1.30
WASECA	MN	27161	1.60
WASHINGTON	MN	27163	1.60
WATONWAN	MN	27165	1.60
WILKIN	MN	27167	1.40
WINONA	MN	27169	1.60
WRIGHT	MN	27171	1.60
YELLOW MEDICINE	MN	27173	1.50
ADAMS	MS	28001	2.85
ALCORN	MS	28003	2.70
AMITE	MS	28005	2.85
ATTALA	MS	28007	2.85
BENTON	MS	28009	2.70
BOLIVAR	MS	28011	2.85
CALHOUN	MS	28013	2.85
CARROLL	MS	28015	2.85
CHICKASAW	MS	28017	2.85
CHOCTAW	MS	28019	2.85
CLAIBORNE	MS	28021	2.85
CLARKE	MS	28023	3.10
CLAY	MS	28025	2.85
COAHOMA	MS	28027	2.85
COPIAH	MS	28029	2.85
COVINGTON	MS	28031	3.00
DE SOTO	MS	28033	2.85
FORREST	MS	28035	3.10
FRANKLIN	MS	28037	2.85
GEORGE	MS	28039	3.00
GREENE	MS	28041	3.10
GRENADA	MS	28043	2.85
HANCOCK	MS	28045	3.00
HARRISON	MS	28047	3.00
HINDS	MS	28049	2.85
HOLMES	MS	28051	2.85
HUMPHREYS	MS	28053	2.85
ISSAQUENA	MS	28055	2.85
ITAWAMBA	MS	28057	2.55
JACKSON	MS	28059	3.00
JASPER	MS	28061	3.10
JEFFERSON	MS	28063	2.85
JEFFERSON DAVIS	MS	28065	3.00
JONES	MS	28067	3.10
KEMPER	MS	28069	2.70
LAFAYETTE	MS	28071	2.85
LAMAR	MS	28073	3.00
LAUDERDALE	MS	28075	2.70
LAWRENCE	MS	28077	2.85
LEAKE	MS	28079	2.70
LEE	MS	28081	2.70

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
LEFLORE	MS	28083	2.85
LINCOLN	MS	28085	2.85
LOWNDES	MS	28087	2.70
MADISON	MS	28089	2.85
MARION	MS	28091	3.00
MARSHALL	MS	28093	2.85
MONROE	MS	28095	2.70
MONTGOMERY	MS	28097	2.85
NESHOBA	MS	28099	2.70
NEWTON	MS	28101	2.70
NOXUBEE	MS	28103	2.70
OKTIBBEHA	MS	28105	2.70
PANOLA	MS	28107	2.85
PEARL RIVER	MS	28109	3.00
PERRY	MS	28111	3.10
PIKE	MS	28113	2.85
PONTOTOC	MS	28115	2.85
PRENTISS	MS	28117	2.70
QUITMAN	MS	28119	2.85
RANKIN	MS	28121	2.85
SCOTT	MS	28123	2.70
SHARKEY	MS	28125	2.85
SIMPSON	MS	28127	2.85
SMITH	MS	28129	3.00
STONE	MS	28131	3.00
SUNFLOWER	MS	28133	2.85
TALLAHATCHIE	MS	28135	2.85
TATE	MS	28137	2.85
TIPPAH	MS	28139	2.70
TISHOMINGO	MS	28141	2.50
TUNICA	MS	28143	2.85
UNION	MS	28145	2.70
WALTHALL	MS	28147	2.85
WARREN	MS	28149	2.85
WASHINGTON	MS	28151	2.85
WAYNE	MS	28153	3.10
WEBSTER	MS	28155	2.85
WILKINSON	MS	28157	2.85
WINSTON	MS	28159	2.70
YALOBUSHA	MS	28161	2.85
YAZOO	MS	28163	2.85
ADAIR	MO	29001	1.90
ANDREW	MO	29003	1.90
ATCHISON	MO	29005	1.90
AUDRAIN	MO	29007	2.00
BARRY	MO	29009	1.70
BARTON	MO	29011	1.70
BATES	MO	29013	1.70
BENTON	MO	29015	1.90
BOLLINGER	MO	29017	2.10
BOONE	MO	29019	2.00
BUCHANAN	MO	29021	1.90
BUTLER	MO	29023	2.10
CALDWELL	MO	29025	1.90
CALLAWAY	MO	29027	2.00
CAMDEN	MO	29029	1.90
CAPE GIRARDEAU	MO	29031	2.10
CARROLL	MO	29033	1.90
CARTER	MO	29035	2.10
CASS	MO	29037	1.90
CEDAR	MO	29039	1.70
CHARITON	MO	29041	1.90
CHRISTIAN	MO	29043	1.70
CLARK	MO	29045	1.90
CLAY	MO	29047	1.90
CLINTON	MO	29049	1.90
COLE	MO	29051	2.00
COOPER	MO	29053	1.90
CRAWFORD	MO	29055	1.90
DADE	MO	29057	1.70
DALLAS	MO	29059	1.70
DAVIESS	MO	29061	1.90

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
DE KALB	MO	29063	1.90
DENT	MO	29065	1.90
DOUGLAS	MO	29067	1.70
DUNKLIN	MO	29069	2.35
FRANKLIN	MO	29071	2.00
GASCONADE	MO	29073	2.00
GENTRY	MO	29075	1.90
GREENE	MO	29077	1.70
GRUNDY	MO	29079	1.90
HARRISON	MO	29081	1.90
HENRY	MO	29083	1.70
HICKORY	MO	29085	1.70
HOLT	MO	29087	1.90
HOWARD	MO	29089	1.90
HOWELL	MO	29091	1.90
IRON	MO	29093	2.10
JACKSON	MO	29095	1.90
JASPER	MO	29097	1.70
JEFFERSON	MO	29099	2.10
JOHNSON	MO	29101	1.90
KNOX	MO	29103	1.90
LACLEDE	MO	29105	1.70
LAFAYETTE	MO	29107	1.90
LAWRENCE	MO	29109	1.70
LEWIS	MO	29111	1.90
LINCOLN	MO	29113	2.00
LINN	MO	29115	1.90
LIVINGSTON	MO	29117	1.90
MCDONALD	MO	29119	1.70
MACON	MO	29121	1.90
MADISON	MO	29123	2.10
MARIES	MO	29125	1.90
MARION	MO	29127	2.00
MERCER	MO	29129	1.90
MILLER	MO	29131	1.90
MISSISSIPPI	MO	29133	2.10
MONITEAU	MO	29135	2.00
MONROE	MO	29137	2.00
MONTGOMERY	MO	29139	2.00
MORGAN	MO	29141	1.90
NEW MADRID	MO	29143	2.35
NEWTON	MO	29145	1.70
NODAWAY	MO	29147	1.90
OREGON	MO	29149	2.10
OSAGE	MO	29151	2.00
OZARK	MO	29153	1.90
PEMISCOT	MO	29155	2.35
PERRY	MO	29157	2.10
PETTIS	MO	29159	1.90
PHELPS	MO	29161	1.90
PIKE	MO	29163	2.00
PLATTE	MO	29165	1.90
POLK	MO	29167	1.70
PULASKI	MO	29169	1.90
PUTNAM	MO	29171	1.90
RALLS	MO	29173	2.00
RANDOLPH	MO	29175	1.90
RAY	MO	29177	1.90
REYNOLDS	MO	29179	2.10
RIPLEY	MO	29181	2.10
ST. CHARLES	MO	29183	2.00
ST. CLAIR	MO	29185	1.70
STE. GENEVIEVE	MO	29186	2.10
ST. FRANCOIS	MO	29187	2.10
ST. LOUIS	MO	29189	2.10
SALINE	MO	29195	1.90
SCHUYLER	MO	29197	1.90
SCOTLAND	MO	29199	1.90
SCOTT	MO	29201	2.10
SHANNON	MO	29203	1.90
SHELBY	MO	29205	1.90
STODDARD	MO	29207	2.10

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
STONE	MO	29209	1.70
SULLIVAN	MO	29211	1.90
TANEY	MO	29213	1.70
TEXAS	MO	29215	1.90
VERNON	MO	29217	1.70
WARREN	MO	29219	2.00
WASHINGTON	MO	29221	2.10
WAYNE	MO	29223	2.10
WEBSTER	MO	29225	1.70
WORTH	MO	29227	1.90
WRIGHT	MO	29229	1.70
ST. LOUIS CITY	MO	29510	2.10
BEAVERHEAD	MT	30001	1.40
BIG HORN	MT	30003	1.50
BLAINE	MT	30005	1.65
BROADWATER	MT	30007	1.40
CARBON	MT	30009	1.40
CARTER	MT	30011	1.40
CASCADE	MT	30013	1.75
CHOUTEAU	MT	30015	1.75
CUSTER	MT	30017	1.50
DANIELS	MT	30019	1.50
DAWSON	MT	30021	1.50
DEER LODGE	MT	30023	1.40
FALLON	MT	30025	1.40
FERGUS	MT	30027	1.65
FLATHEAD	MT	30029	1.50
GALLATIN	MT	30031	1.40
GARFIELD	MT	30033	1.65
GLACIER	MT	30035	1.65
GOLDEN VALLEY	MT	30037	1.65
GRANITE	MT	30039	1.65
HILL	MT	30041	1.75
JEFFERSON	MT	30043	1.40
JUDITH BASIN	MT	30045	1.65
LAKE	MT	30047	1.50
LEWIS AND CLARK	MT	30049	1.65
LIBERTY	MT	30051	1.75
LINCOLN	MT	30053	1.50
MCCONE	MT	30055	1.50
MADISON	MT	30057	1.40
MEAGHER	MT	30059	1.40
MINERAL	MT	30061	1.50
MISSOULA	MT	30063	1.50
MUSSELSHELL	MT	30065	1.65
PARK	MT	30067	1.40
PETROLEUM	MT	30069	1.65
PHILLIPS	MT	30071	1.65
PONDERA	MT	30073	1.65
POWDER RIVER	MT	30075	1.40
POWELL	MT	30077	1.65
PRAIRIE	MT	30079	1.50
RAVALLI	MT	30081	1.65
RICHLAND	MT	30083	1.50
ROOSEVELT	MT	30085	1.50
ROSEBUD	MT	30087	1.50
SANDERS	MT	30089	1.50
SHERIDAN	MT	30091	1.50
SILVER BOW	MT	30093	1.40
STILLWATER	MT	30095	1.40
SWEET GRASS	MT	30097	1.40
TETON	MT	30099	1.65
TOOLE	MT	30101	1.65
TREASURE	MT	30103	1.50
VALLEY	MT	30105	1.65
WHEATLAND	MT	30107	1.65
WIBAUX	MT	30109	1.40
YELLOWSTONE	MT	30111	1.65
YELLOWSTONE NATIONAL PARK	MT	30113	1.40
ADAMS	NE	31001	1.60
ANTELOPE	NE	31003	1.60
ARTHUR	NE	31005	1.40

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
BANNER	NE	31007	1.40
BLAINE	NE	31009	1.50
BOONE	NE	31011	1.60
BOX BUTTE	NE	31013	1.40
BOYD	NE	31015	1.50
BROWN	NE	31017	1.50
BUFFALO	NE	31019	1.60
BURT	NE	31021	1.80
BUTLER	NE	31023	1.80
CASS	NE	31025	1.90
CEDAR	NE	31027	1.60
CHASE	NE	31029	1.50
CHERRY	NE	31031	1.40
CHEYENNE	NE	31033	1.40
CLAY	NE	31035	1.80
COLFAX	NE	31037	1.80
CUMING	NE	31039	1.80
CUSTER	NE	31041	1.50
DAKOTA	NE	31043	1.80
DAWES	NE	31045	1.40
DAWSON	NE	31047	1.60
DEUEL	NE	31049	1.40
DIXON	NE	31051	1.60
DODGE	NE	31053	1.80
DOUGLAS	NE	31055	1.90
DUNDY	NE	31057	1.60
FILLMORE	NE	31059	1.80
FRANKLIN	NE	31061	1.60
FRONTIER	NE	31063	1.60
FURNAS	NE	31065	1.60
GAGE	NE	31067	1.90
GARDEN	NE	31069	1.40
GARFIELD	NE	31071	1.50
GOSPER	NE	31073	1.60
GRANT	NE	31075	1.40
GREELEY	NE	31077	1.60
HALL	NE	31079	1.60
HAMILTON	NE	31081	1.80
HARLAN	NE	31083	1.60
HAYES	NE	31085	1.60
HITCHCOCK	NE	31087	1.60
HOLT	NE	31089	1.50
HOOKER	NE	31091	1.40
HOWARD	NE	31093	1.60
JEFFERSON	NE	31095	1.80
JOHNSON	NE	31097	1.90
KEARNEY	NE	31099	1.60
KEITH	NE	31101	1.40
KEYA PAHA	NE	31103	1.50
KIMBALL	NE	31105	1.40
KNOX	NE	31107	1.60
LANCASTER	NE	31109	1.80
LINCOLN	NE	31111	1.50
LOGAN	NE	31113	1.50
LOUP	NE	31115	1.50
MCPHERSON	NE	31117	1.50
MADISON	NE	31119	1.60
MERRICK	NE	31121	1.60
MORRILL	NE	31123	1.40
NANCE	NE	31125	1.60
NEMAHA	NE	31127	1.90
NUCKOLLS	NE	31129	1.60
OTOE	NE	31131	1.90
PAWNEE	NE	31133	1.90
PERKINS	NE	31135	1.50
PHELPS	NE	31137	1.60
PIERCE	NE	31139	1.60
PLATTE	NE	31141	1.80
POLK	NE	31143	1.80
RED WILLOW	NE	31145	1.60
RICHARDSON	NE	31147	1.90
ROCK	NE	31149	1.50

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
SALINE	NE	31151	1.80
SARPY	NE	31153	1.90
SAUNDERS	NE	31155	1.80
SCOTTS BLUFF	NE	31157	1.40
SEWARD	NE	31159	1.80
SHERIDAN	NE	31161	1.40
SHERMAN	NE	31163	1.60
SIOUX	NE	31165	1.40
STANTON	NE	31167	1.60
THAYER	NE	31169	1.80
THOMAS	NE	31171	1.40
THURSTON	NE	31173	1.80
VALLEY	NE	31175	1.60
WASHINGTON	NE	31177	1.90
WAYNE	NE	31179	1.60
WEBSTER	NE	31181	1.60
WHEELER	NE	31183	1.60
YORK	NE	31185	1.80
CHURCHILL	NV	32001	1.40
CLARK	NV	32003	2.25
DOUGLAS	NV	32005	1.20
ELKO	NV	32007	1.40
ESMERALDA	NV	32009	1.50
EUREKA	NV	32011	1.40
HUMBOLDT	NV	32013	1.40
LANDER	NV	32015	1.40
LINCOLN	NV	32017	1.80
LYON	NV	32019	1.20
MINERAL	NV	32021	1.20
NYE	NV	32023	1.50
PERSHING	NV	32027	1.40
STOREY	NV	32029	1.20
WASHOE	NV	32031	1.40
WHITE PINE	NV	32033	1.50
CARSON CITY	NV	32510	1.20
BELKNAP	NH	33001	2.30
CARROLL	NH	33003	2.15
CHESHIRE	NH	33005	2.50
COOS	NH	33007	1.95
GRAFTON	NH	33009	2.15
HILLSBOROUGH	NH	33011	2.60
MERRIMACK	NH	33013	2.45
ROCKINGHAM	NH	33015	2.60
STRAFFORD	NH	33017	2.45
SULLIVAN	NH	33019	2.30
ATLANTIC	NJ	34001	2.20
BERGEN	NJ	34003	2.50
BURLINGTON	NJ	34005	2.20
CAMDEN	NJ	34007	2.20
CAPE MAY	NJ	34009	2.20
CUMBERLAND	NJ	34011	2.20
ESSEX	NJ	34013	2.50
GLOUCESTER	NJ	34015	2.20
HUDSON	NJ	34017	2.50
HUNTERDON	NJ	34019	2.30
MERCER	NJ	34021	2.30
MIDDLESEX	NJ	34023	2.30
MONMOUTH	NJ	34025	2.30
MORRIS	NJ	34027	2.30
OCEAN	NJ	34029	2.30
PASSAIC	NJ	34031	2.50
SALEM	NJ	34033	2.20
SOMERSET	NJ	34035	2.30
SUSSEX	NJ	34037	2.30
UNION	NJ	34039	2.50
WARREN	NJ	34041	2.30
BERNALILLO	NM	35001	2.30
CATRON	NM	35003	1.90
CHAVES	NM	35005	1.60
CIBOLA	NM	35006	1.90
COLFAX	NM	35007	1.90
CURRY	NM	35009	1.60

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
DE BACA	NM	35011	1.60
DONA ANA	NM	35013	1.60
EDDY	NM	35015	1.60
GRANT	NM	35017	1.60
GUADALUPE	NM	35019	1.90
HARDING	NM	35021	1.90
HIDALGO	NM	35023	1.60
LEA	NM	35025	1.60
LINCOLN	NM	35027	1.90
LOS ALAMOS	NM	35028	2.30
LUNA	NM	35029	1.60
MCKINLEY	NM	35031	1.90
MORA	NM	35033	1.90
OTERO	NM	35035	1.60
QUAY	NM	35037	1.60
RIO ARRIBA	NM	35039	2.20
ROOSEVELT	NM	35041	1.60
SANDOVAL	NM	35043	2.30
SAN JUAN	NM	35045	2.20
SAN MIGUEL	NM	35047	1.90
SANTA FE	NM	35049	2.30
SIERRA	NM	35051	1.90
SOCORRO	NM	35053	1.90
TAOS	NM	35055	1.90
TORRANCE	NM	35057	1.90
UNION	NM	35059	1.90
VALENCIA	NM	35061	1.90
ALBANY	NY	36001	2.15
ALLEGANY	NY	36003	1.85
BRONX	NY	36005	2.50
BROOME	NY	36007	1.90
CATTARAUGUS	NY	36009	1.60
CAYUGA	NY	36011	1.85
CHAUTAUQUA	NY	36013	1.60
CHEMUNG	NY	36015	1.85
CHENANGO	NY	36017	1.85
CLINTON	NY	36019	1.95
COLUMBIA	NY	36021	2.15
CORTLAND	NY	36023	1.85
DELAWARE	NY	36025	2.15
DUTCHESS	NY	36027	2.30
ERIE	NY	36029	1.85
ESSEX	NY	36031	2.05
FRANKLIN	NY	36033	1.85
FULTON	NY	36035	2.05
GENESEE	NY	36037	1.85
GREENE	NY	36039	2.15
HAMILTON	NY	36041	1.95
HERKIMER	NY	36043	1.95
JEFFERSON	NY	36045	1.85
KINGS	NY	36047	2.50
LEWIS	NY	36049	1.85
LIVINGSTON	NY	36051	1.85
MADISON	NY	36053	1.85
MONROE	NY	36055	1.85
MONTGOMERY	NY	36057	2.05
NASSAU	NY	36059	2.50
NEW YORK	NY	36061	2.50
NIAGARA	NY	36063	1.85
ONEIDA	NY	36065	1.85
ONONDAGA	NY	36067	1.85
ONTARIO	NY	36069	1.85
ORANGE	NY	36071	2.30
ORLEANS	NY	36073	1.85
OSWEGO	NY	36075	1.85
OTSEGO	NY	36077	1.95
PUTNAM	NY	36079	2.30
QUEENS	NY	36081	2.50
RENSSELAER	NY	36083	2.15
RICHMOND	NY	36085	2.50
ROCKLAND	NY	36087	2.50
ST. LAWRENCE	NY	36089	1.85

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
SARATOGA	NY	36091	2.05
SCHENECTADY	NY	36093	2.15
SCHOHARIE	NY	36095	2.05
SCHUYLER	NY	36097	1.85
SENECA	NY	36099	1.85
STEUBEN	NY	36101	1.85
SUFFOLK	NY	36103	2.50
SULLIVAN	NY	36105	2.15
TIOGA	NY	36107	1.90
TOMPKINS	NY	36109	1.85
ULSTER	NY	36111	2.15
WARREN	NY	36113	1.95
WASHINGTON	NY	36115	2.05
WAYNE	NY	36117	1.85
WESTCHESTER	NY	36119	2.50
WYOMING	NY	36121	1.85
YATES	NY	36123	1.85
ALAMANCE	NC	37001	2.35
ALEXANDER	NC	37003	2.35
ALLEGHANY	NC	37005	2.35
ANSON	NC	37007	2.55
ASHE	NC	37009	2.25
AVERY	NC	37011	2.25
BEAUFORT	NC	37013	2.65
BERTIE	NC	37015	2.65
BLADEN	NC	37017	2.80
BRUNSWICK	NC	37019	2.85
BUNCOMBE	NC	37021	2.55
BURKE	NC	37023	2.35
CABARRUS	NC	37025	2.55
CALDWELL	NC	37027	2.35
CAMDEN	NC	37029	2.55
CARTERET	NC	37031	2.85
CASWELL	NC	37033	2.35
CATAWBA	NC	37035	2.35
CHATHAM	NC	37037	2.35
CHEROKEE	NC	37039	2.55
CHOWAN	NC	37041	2.55
CLAY	NC	37043	2.55
CLEVELAND	NC	37045	2.55
COLUMBUS	NC	37047	3.00
CRAVEN	NC	37049	2.85
CUMBERLAND	NC	37051	2.80
CURRITUCK	NC	37053	2.55
DARE	NC	37055	2.65
DAVIDSON	NC	37057	2.35
DAVIE	NC	37059	2.35
DUPLIN	NC	37061	2.85
DURHAM	NC	37063	2.35
EDGECOMBE	NC	37065	2.65
FORSYTH	NC	37067	2.35
FRANKLIN	NC	37069	2.55
GASTON	NC	37071	2.55
GATES	NC	37073	2.55
GRAHAM	NC	37075	2.55
GRANVILLE	NC	37077	2.55
GREENE	NC	37079	2.65
GUILFORD	NC	37081	2.35
HALIFAX	NC	37083	2.55
HARNETT	NC	37085	2.55
HAYWOOD	NC	37087	2.55
HENDERSON	NC	37089	2.55
HERTFORD	NC	37091	2.55
HOKE	NC	37093	2.80
HYDE	NC	37095	2.65
IREDELL	NC	37097	2.35
JACKSON	NC	37099	2.55
JOHNSTON	NC	37101	2.65
JONES	NC	37103	2.85
LEE	NC	37105	2.55
LENOIR	NC	37107	2.85
LINCOLN	NC	37109	2.35

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
MCDOWELL	NC	37111	2.35
MACON	NC	37113	2.55
MADISON	NC	37115	2.25
MARTIN	NC	37117	2.65
MECKLENBURG	NC	37119	2.55
MITCHELL	NC	37121	2.25
MONTGOMERY	NC	37123	2.55
MOORE	NC	37125	2.55
NASH	NC	37127	2.65
NEW HANOVER	NC	37129	2.85
NORTHAMPTON	NC	37131	2.55
ONSLOW	NC	37133	2.85
ORANGE	NC	37135	2.35
PAMLICO	NC	37137	2.85
PASQUOTANK	NC	37139	2.55
PENDER	NC	37141	2.85
PERQUIMANS	NC	37143	2.55
PERSON	NC	37145	2.35
PITT	NC	37147	2.65
POLK	NC	37149	2.55
RANDOLPH	NC	37151	2.35
RICHMOND	NC	37153	2.55
ROBESON	NC	37155	3.00
ROCKINGHAM	NC	37157	2.35
ROWAN	NC	37159	2.35
RUTHERFORD	NC	37161	2.55
SAMPSON	NC	37163	2.80
SCOTLAND	NC	37165	2.80
STANLY	NC	37167	2.55
STOKES	NC	37169	2.35
SURRY	NC	37171	2.35
SWAIN	NC	37173	2.25
TRANSYLVANIA	NC	37175	2.55
TYRRELL	NC	37177	2.65
UNION	NC	37179	2.55
VANCE	NC	37181	2.55
WAKE	NC	37183	2.55
WARREN	NC	37185	2.55
WASHINGTON	NC	37187	2.65
WATAUGA	NC	37189	2.25
WAYNE	NC	37191	2.65
WILKES	NC	37193	2.35
WILSON	NC	37195	2.65
YADKIN	NC	37197	2.35
YANCEY	NC	37199	2.25
ADAMS	ND	38001	1.40
BARNES	ND	38003	1.40
BENSON	ND	38005	1.40
BILLINGS	ND	38007	1.40
BOTTINEAU	ND	38009	1.40
BOWMAN	ND	38011	1.40
BURKE	ND	38013	1.40
BURLEIGH	ND	38015	1.40
CASS	ND	38017	1.40
CAVALIER	ND	38019	1.40
DICKEY	ND	38021	1.40
DIVIDE	ND	38023	1.40
DUNN	ND	38025	1.40
EDDY	ND	38027	1.40
EMMONS	ND	38029	1.40
FOSTER	ND	38031	1.40
GOLDEN VALLEY	ND	38033	1.40
GRAND FORKS	ND	38035	1.40
GRANT	ND	38037	1.40
GRIGGS	ND	38039	1.40
HETTINGER	ND	38041	1.40
KIDDER	ND	38043	1.40
LA MOURE	ND	38045	1.40
LOGAN	ND	38047	1.40
MCHENRY	ND	38049	1.40
MCINTOSH	ND	38051	1.40
MCKENZIE	ND	38053	1.40

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
MCLEAN	ND	38055	1.40
MERCER	ND	38057	1.40
MORTON	ND	38059	1.40
MOUNTRAIL	ND	38061	1.40
NELSON	ND	38063	1.40
OLIVER	ND	38065	1.40
PEMBINA	ND	38067	1.40
PIERCE	ND	38069	1.40
RAMSEY	ND	38071	1.40
RANSOM	ND	38073	1.40
RENVILLE	ND	38075	1.40
RICHLAND	ND	38077	1.40
ROLETTE	ND	38079	1.40
SARGENT	ND	38081	1.40
SHERIDAN	ND	38083	1.40
SIOUX	ND	38085	1.40
SLOPE	ND	38087	1.40
STARK	ND	38089	1.40
STEELE	ND	38091	1.40
STUTSMAN	ND	38093	1.40
TOWNER	ND	38095	1.40
TRAILL	ND	38097	1.40
WALSH	ND	38099	1.40
WARD	ND	38101	1.40
WELLS	ND	38103	1.40
WILLIAMS	ND	38105	1.40
ADAMS	OH	39001	2.05
ALLEN	OH	39003	2.00
ASHLAND	OH	39005	2.00
ASHTABULA	OH	39007	2.00
ATHENS	OH	39009	2.00
AUGLAIZE	OH	39011	2.00
BELMONT	OH	39013	2.00
BROWN	OH	39015	2.05
BUTLER	OH	39017	2.05
CARROLL	OH	39019	1.95
CHAMPAIGN	OH	39021	2.00
CLARK	OH	39023	2.00
CLERMONT	OH	39025	2.05
CLINTON	OH	39027	2.05
COLUMBIANA	OH	39029	1.95
COSHOCTON	OH	39031	1.95
CRAWFORD	OH	39033	2.00
CUYAHOGA	OH	39035	2.00
DARKE	OH	39037	2.00
DEFIANCE	OH	39039	1.80
DELAWARE	OH	39041	2.00
ERIE	OH	39043	2.00
FAIRFIELD	OH	39045	2.00
FAYETTE	OH	39047	2.00
FRANKLIN	OH	39049	2.00
FULTON	OH	39051	1.85
GALLIA	OH	39053	2.20
GEAUGA	OH	39055	2.00
GREENE	OH	39057	2.00
GUERNSEY	OH	39059	2.00
HAMILTON	OH	39061	2.05
HANCOCK	OH	39063	2.00
HARDIN	OH	39065	2.00
HARRISON	OH	39067	1.95
HENRY	OH	39069	1.85
HIGHLAND	OH	39071	2.05
HOCKING	OH	39073	2.00
HOLMES	OH	39075	1.95
HURON	OH	39077	2.00
JACKSON	OH	39079	2.05
JEFFERSON	OH	39081	1.95
KNOX	OH	39083	2.00
LAKE	OH	39085	2.00
LAWRENCE	OH	39087	2.20
LICKING	OH	39089	2.00
LOGAN	OH	39091	2.00

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
LORAIN	OH	39093	2.00
LUCAS	OH	39095	1.85
MADISON	OH	39097	2.00
MAHONING	OH	39099	1.95
MARION	OH	39101	2.00
MEDINA	OH	39103	2.00
MEIGS	OH	39105	2.05
MERCER	OH	39107	2.00
MIAMI	OH	39109	2.00
MONROE	OH	39111	2.00
MONTGOMERY	OH	39113	2.00
MORGAN	OH	39115	2.00
MORROW	OH	39117	2.00
MUSKINGUM	OH	39119	2.00
NOBLE	OH	39121	2.00
OTTAWA	OH	39123	1.85
PAULDING	OH	39125	1.80
PERRY	OH	39127	2.00
PICKAWAY	OH	39129	2.00
PIKE	OH	39131	2.05
PORTAGE	OH	39133	2.00
PREBLE	OH	39135	2.00
PUTNAM	OH	39137	2.00
RICHLAND	OH	39139	2.00
ROSS	OH	39141	2.05
SANDUSKY	OH	39143	2.00
SCIOTO	OH	39145	2.05
SENECA	OH	39147	2.00
SHELBY	OH	39149	2.00
STARK	OH	39151	1.95
SUMMIT	OH	39153	2.00
TRUMBULL	OH	39155	2.00
TUSCARAWAS	OH	39157	1.95
UNION	OH	39159	2.00
VAN WERT	OH	39161	2.00
VINTON	OH	39163	2.05
WARREN	OH	39165	2.05
WASHINGTON	OH	39167	2.00
WAYNE	OH	39169	1.95
WILLIAMS	OH	39171	1.80
WOOD	OH	39173	1.85
WYANDOT	OH	39175	2.00
ADAIR	OK	40001	1.90
ALFALFA	OK	40003	1.90
ATOKA	OK	40005	1.95
BEAVER	OK	40007	1.90
BECKHAM	OK	40009	1.90
BLAINE	OK	40011	1.90
BRYAN	OK	40013	1.95
CADDO	OK	40015	1.90
CANADIAN	OK	40017	1.90
CARTER	OK	40019	1.95
CHEROKEE	OK	40021	1.90
CHOCTAW	OK	40023	1.95
CIMARRON	OK	40025	1.90
CLEVELAND	OK	40027	1.90
COAL	OK	40029	1.95
COMANCHE	OK	40031	1.95
COTTON	OK	40033	1.95
CRAIG	OK	40035	1.70
CREEK	OK	40037	1.90
CUSTER	OK	40039	1.90
DELAWARE	OK	40041	1.70
DEWEY	OK	40043	1.90
ELLIS	OK	40045	1.90
GARFIELD	OK	40047	1.90
GARVIN	OK	40049	1.95
GRADY	OK	40051	1.90
GRANT	OK	40053	1.90
GREER	OK	40055	1.95
HARMON	OK	40057	1.95
HARPER	OK	40059	1.90

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
HASKELL	OK	40061	1.90
HUGHES	OK	40063	1.90
JACKSON	OK	40065	1.95
JEFFERSON	OK	40067	1.95
JOHNSTON	OK	40069	1.95
KAY	OK	40071	1.90
KINGFISHER	OK	40073	1.90
KIOWA	OK	40075	1.95
LATIMER	OK	40077	1.90
LE FLORE	OK	40079	1.90
LINCOLN	OK	40081	1.90
LOGAN	OK	40083	1.90
LOVE	OK	40085	1.95
MCCLAIN	OK	40087	1.90
MCCURTAIN	OK	40089	1.95
MCINTOSH	OK	40091	1.90
MAJOR	OK	40093	1.90
MARSHALL	OK	40095	1.95
MAYES	OK	40097	1.70
MURRAY	OK	40099	1.95
MUSKOGEE	OK	40101	1.90
NOBLE	OK	40103	1.90
NOWATA	OK	40105	1.70
OKFUSKEE	OK	40107	1.90
OKLAHOMA	OK	40109	1.90
OKMULGEE	OK	40111	1.90
OSAGE	OK	40113	1.90
OTTAWA	OK	40115	1.70
PAWNEE	OK	40117	1.90
PAYNE	OK	40119	1.90
PITTSBURG	OK	40121	1.90
PONTOTOC	OK	40123	1.95
POTTAWATOMIE	OK	40125	1.90
PUSHMATAHA	OK	40127	1.95
ROGER MILLS	OK	40129	1.90
ROGERS	OK	40131	1.70
SEMINOLE	OK	40133	1.90
SEQUOYAH	OK	40135	1.90
STEPHENS	OK	40137	1.95
TEXAS	OK	40139	1.90
TILLMAN	OK	40141	1.95
TULSA	OK	40143	1.90
WAGONER	OK	40145	1.90
WASHINGTON	OK	40147	1.70
WASHITA	OK	40149	1.90
WOODS	OK	40151	1.90
WOODWARD	OK	40153	1.90
BAKER	OR	41001	1.35
BENTON	OR	41003	1.55
CLACKAMAS	OR	41005	1.45
CLATSOP	OR	41007	1.45
COLUMBIA	OR	41009	1.45
COOS	OR	41011	1.70
CROOK	OR	41013	1.30
CURRY	OR	41015	1.85
DESCHUTES	OR	41017	1.55
DOUGLAS	OR	41019	1.70
GILLIAM	OR	41021	1.30
GRANT	OR	41023	1.35
HARNEY	OR	41025	1.35
HOOD RIVER	OR	41027	1.45
JACKSON	OR	41029	1.85
JEFFERSON	OR	41031	1.30
JOSEPHINE	OR	41033	1.85
KLAMATH	OR	41035	1.70
LAKE	OR	41037	1.55
LANE	OR	41039	1.55
LINCOLN	OR	41041	1.55
LINN	OR	41043	1.55
MALHEUR	OR	41045	1.35
MARION	OR	41047	1.45
MORROW	OR	41049	1.30

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
MULTNOMAH	OR	41051	1.45
POLK	OR	41053	1.45
SHERMAN	OR	41055	1.30
TILLAMOOK	OR	41057	1.45
UMATILLA	OR	41059	1.35
UNION	OR	41061	1.35
WALLOWA	OR	41063	1.35
WASCO	OR	41065	1.30
WASHINGTON	OR	41067	1.45
WHEELER	OR	41069	1.30
YAMHILL	OR	41071	1.45
ADAMS	PA	42001	2.05
ALLEGHENY	PA	42003	1.95
ARMSTRONG	PA	42005	1.95
BEAVER	PA	42007	1.95
BEDFORD	PA	42009	2.05
BERKS	PA	42011	2.05
BLAIR	PA	42013	2.05
BRADFORD	PA	42015	1.90
BUCKS	PA	42017	2.10
BUTLER	PA	42019	1.95
CAMBRIA	PA	42021	2.05
CAMERON	PA	42023	1.95
CARBON	PA	42025	2.10
CENTRE	PA	42027	2.00
CHESTER	PA	42029	2.10
CLARION	PA	42031	1.95
CLEARFIELD	PA	42033	1.95
CLINTON	PA	42035	2.00
COLUMBIA	PA	42037	2.00
CRAWFORD	PA	42039	1.75
CUMBERLAND	PA	42041	2.05
DAUPHIN	PA	42043	2.05
DELAWARE	PA	42045	2.20
ELK	PA	42047	1.95
ERIE	PA	42049	1.75
FAYETTE	PA	42051	1.95
FOREST	PA	42053	1.75
FRANKLIN	PA	42055	2.05
FULTON	PA	42057	2.05
GREENE	PA	42059	1.95
HUNTINGDON	PA	42061	2.05
INDIANA	PA	42063	1.95
JEFFERSON	PA	42065	1.95
JUNIATA	PA	42067	2.00
LACKAWANNA	PA	42069	2.00
LANCASTER	PA	42071	2.05
LAWRENCE	PA	42073	1.95
LEBANON	PA	42075	2.05
LEHIGH	PA	42077	2.10
LUZERNE	PA	42079	2.00
LYCOMING	PA	42081	2.00
MCKEAN	PA	42083	1.85
MERCER	PA	42085	1.75
MIFFLIN	PA	42087	2.00
MONROE	PA	42089	2.10
MONTGOMERY	PA	42091	2.10
MONTOUR	PA	42093	2.00
NORTHAMPTON	PA	42095	2.10
NORTHUMBERLAND	PA	42097	2.00
PERRY	PA	42099	2.05
PHILADELPHIA	PA	42101	2.20
PIKE	PA	42103	2.15
POTTER	PA	42105	1.90
SCHUYLKILL	PA	42107	2.05
SNYDER	PA	42109	2.00
SOMERSET	PA	42111	2.05
SULLIVAN	PA	42113	2.00
SUSQUEHANNA	PA	42115	1.90
TIOGA	PA	42117	1.90
UNION	PA	42119	2.00
VENANGO	PA	42121	1.75

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
WARREN	PA	42123	1.60
WASHINGTON	PA	42125	1.95
WAYNE	PA	42127	2.15
WESTMORELAND	PA	42129	1.95
WYOMING	PA	42131	2.00
YORK	PA	42133	2.05
BRISTOL	RI	44001	2.75
KENT	RI	44003	2.75
NEWPORT	RI	44005	2.75
PROVIDENCE	RI	44007	2.75
WASHINGTON	RI	44009	2.75
ABBEVILLE	SC	45001	2.70
AIKEN	SC	45003	2.80
ALLENDALE	SC	45005	3.10
ANDERSON	SC	45007	2.55
BAMBERG	SC	45009	3.10
BARNWELL	SC	45011	2.80
BEAUFORT	SC	45013	3.10
BERKELEY	SC	45015	3.00
CALHOUN	SC	45017	2.80
CHARLESTON	SC	45019	3.10
CHEROKEE	SC	45021	2.55
CHESTER	SC	45023	2.70
CHESTERFIELD	SC	45025	2.70
CLARENDON	SC	45027	2.80
COLLETON	SC	45029	3.10
DARLINGTON	SC	45031	2.80
DILLON	SC	45033	3.00
DORCHESTER	SC	45035	3.10
EDGEFIELD	SC	45037	2.80
FAIRFIELD	SC	45039	2.70
FLORENCE	SC	45041	3.00
GEORGETOWN	SC	45043	3.00
GREENVILLE	SC	45045	2.55
GREENWOOD	SC	45047	2.70
HAMPTON	SC	45049	3.20
HORRY	SC	45051	3.00
JASPER	SC	45053	3.20
KERSHAW	SC	45055	2.70
LANCASTER	SC	45057	2.70
LAURENS	SC	45059	2.55
LEE	SC	45061	2.80
LEXINGTON	SC	45063	2.80
MCCORMICK	SC	45065	2.80
MARION	SC	45067	3.00
MARLBORO	SC	45069	2.80
NEWBERRY	SC	45071	2.70
OCONEE	SC	45073	2.55
ORANGEBURG	SC	45075	2.80
PICKENS	SC	45077	2.55
RICHLAND	SC	45079	2.80
SALUDA	SC	45081	2.80
SPARTANBURG	SC	45083	2.55
SUMTER	SC	45085	2.80
UNION	SC	45087	2.55
WILLIAMSBURG	SC	45089	3.00
YORK	SC	45091	2.55
AURORA	SD	46003	1.50
BEADLE	SD	46005	1.50
BENNETT	SD	46007	1.40
BON HOMME	SD	46009	1.50
BROOKINGS	SD	46011	1.50
BROWN	SD	46013	1.40
BRULE	SD	46015	1.50
BUFFALO	SD	46017	1.40
BUTTE	SD	46019	1.40
CAMPBELL	SD	46021	1.40
CHARLES MIX	SD	46023	1.50
CLARK	SD	46025	1.50
CLAY	SD	46027	1.70
CODINGTON	SD	46029	1.50
CORSON	SD	46031	1.40

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
CUSTER	SD	46033	1.40
DAVISON	SD	46035	1.50
DAY	SD	46037	1.40
DEUEL	SD	46039	1.50
DEWEY	SD	46041	1.40
DOUGLAS	SD	46043	1.50
EDMUNDS	SD	46045	1.40
FALL RIVER	SD	46047	1.40
FAULK	SD	46049	1.40
GRANT	SD	46051	1.50
GREGORY	SD	46053	1.50
HAAKON	SD	46055	1.40
HAMLIN	SD	46057	1.50
HAND	SD	46059	1.40
HANSON	SD	46061	1.50
HARDING	SD	46063	1.40
HUGHES	SD	46065	1.40
HUTCHINSON	SD	46067	1.50
HYDE	SD	46069	1.40
JACKSON	SD	46071	1.40
JERAULD	SD	46073	1.50
JONES	SD	46075	1.40
KINGSBURY	SD	46077	1.50
LAKE	SD	46079	1.50
LAWRENCE	SD	46081	1.40
LINCOLN	SD	46083	1.60
LYMAN	SD	46085	1.40
MCCOOK	SD	46087	1.50
MCPHERSON	SD	46089	1.40
MARSHALL	SD	46091	1.40
MEADE	SD	46093	1.40
MELLETTE	SD	46095	1.40
MINER	SD	46097	1.50
MINNEHAHA	SD	46099	1.60
MOODY	SD	46101	1.50
PENNINGTON	SD	46103	1.40
PERKINS	SD	46105	1.40
POTTER	SD	46107	1.40
ROBERTS	SD	46109	1.50
SANBORN	SD	46111	1.50
SHANNON	SD	46113	1.40
SPINK	SD	46115	1.40
STANLEY	SD	46117	1.40
SULLY	SD	46119	1.40
TODD	SD	46121	1.40
TRIPP	SD	46123	1.40
TURNER	SD	46125	1.60
UNION	SD	46127	1.70
WALWORTH	SD	46129	1.40
YANKTON	SD	46135	1.60
ZIEBACH	SD	46137	1.40
ANDERSON	TN	47001	2.15
BEDFORD	TN	47003	2.05
BENTON	TN	47005	2.20
BLEDSOE	TN	47007	2.25
BLOUNT	TN	47009	2.25
BRADLEY	TN	47011	2.55
CAMPBELL	TN	47013	2.15
CANNON	TN	47015	2.05
CARROLL	TN	47017	2.50
CARTER	TN	47019	2.25
CHEATHAM	TN	47021	2.05
CHESTER	TN	47023	2.70
CLAIBORNE	TN	47025	2.15
CLAY	TN	47027	2.05
COCKE	TN	47029	2.25
COFFEE	TN	47031	2.05
CROCKETT	TN	47033	2.70
CUMBERLAND	TN	47035	2.15
DAVIDSON	TN	47037	2.05
DECATUR	TN	47039	2.20
DE KALB	TN	47041	2.05

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
DICKSON	TN	47043	2.20
DYER	TN	47045	2.50
FAYETTE	TN	47047	2.85
FENTRESS	TN	47049	2.15
FRANKLIN	TN	47051	2.25
GIBSON	TN	47053	2.50
GILES	TN	47055	2.20
GRAINGER	TN	47057	2.25
GREENE	TN	47059	2.25
GRUNDY	TN	47061	2.25
HAMBLEN	TN	47063	2.25
HAMILTON	TN	47065	2.55
HANCOCK	TN	47067	2.25
HARDEMAN	TN	47069	2.70
HARDIN	TN	47071	2.50
HAWKINS	TN	47073	2.25
HAYWOOD	TN	47075	2.70
HENDERSON	TN	47077	2.50
HENRY	TN	47079	2.30
HICKMAN	TN	47081	2.20
HOUSTON	TN	47083	2.20
HUMPHREYS	TN	47085	2.20
JACKSON	TN	47087	2.05
JEFFERSON	TN	47089	2.25
JOHNSON	TN	47091	2.25
KNOX	TN	47093	2.25
LAKE	TN	47095	2.30
LAUDERDALE	TN	47097	2.70
LAWRENCE	TN	47099	2.20
LEWIS	TN	47101	2.20
LINCOLN	TN	47103	2.25
LOUDON	TN	47105	2.25
MCMINN	TN	47107	2.55
MCNAIRY	TN	47109	2.70
MACON	TN	47111	2.05
MADISON	TN	47113	2.70
MARION	TN	47115	2.25
MARSHALL	TN	47117	2.05
MAURY	TN	47119	2.05
MEIGS	TN	47121	2.55
MONROE	TN	47123	2.55
MONTGOMERY	TN	47125	2.20
MOORE	TN	47127	2.25
MORGAN	TN	47129	2.15
OBION	TN	47131	2.30
OVERTON	TN	47133	2.15
PERRY	TN	47135	2.20
PICKETT	TN	47137	2.15
POLK	TN	47139	2.55
PUTNAM	TN	47141	2.15
RHEA	TN	47143	2.25
ROANE	TN	47145	2.25
ROBERTSON	TN	47147	2.05
RUTHERFORD	TN	47149	2.05
SCOTT	TN	47151	2.15
SEQUATCHIE	TN	47153	2.25
SEVIER	TN	47155	2.25
SHELBY	TN	47157	2.85
SMITH	TN	47159	2.05
STEWART	TN	47161	2.20
SULLIVAN	TN	47163	2.25
SUMNER	TN	47165	2.05
TIPTON	TN	47167	2.85
TROUSDALE	TN	47169	2.05
UNICOI	TN	47171	2.25
UNION	TN	47173	2.15
VAN BUREN	TN	47175	2.15
WARREN	TN	47177	2.05
WASHINGTON	TN	47179	2.25
WAYNE	TN	47181	2.20
WEAKLEY	TN	47183	2.30
WHITE	TN	47185	2.15

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
WILLIAMSON	TN	47187	2.05
WILSON	TN	47189	2.05
ANDERSON	TX	48001	2.35
ANDREWS	TX	48003	1.95
ANGELINA	TX	48005	2.65
ARANSAS	TX	48007	2.95
ARCHER	TX	48009	1.95
ARMSTRONG	TX	48011	1.95
ATASCOSA	TX	48013	2.75
AUSTIN	TX	48015	2.75
BAILEY	TX	48017	1.60
BANDERA	TX	48019	2.55
BASTROP	TX	48021	2.65
BAYLOR	TX	48023	1.95
BEE	TX	48025	2.95
BELL	TX	48027	2.35
BEXAR	TX	48029	2.65
BLANCO	TX	48031	2.55
BORDEN	TX	48033	2.10
BOSQUE	TX	48035	2.35
BOWIE	TX	48037	2.10
BRAZORIA	TX	48039	2.95
BRAZOS	TX	48041	2.65
BREWSTER	TX	48043	2.35
BRISCOE	TX	48045	1.95
BROOKS	TX	48047	3.15
BROWN	TX	48049	2.10
BURLESON	TX	48051	2.65
BURNET	TX	48053	2.35
CALDWELL	TX	48055	2.65
CALHOUN	TX	48057	2.95
CALLAHAN	TX	48059	2.10
CAMERON	TX	48061	3.15
CAMP	TX	48063	1.95
CARSON	TX	48065	1.95
CASS	TX	48067	2.10
CASTRO	TX	48069	1.60
CHAMBERS	TX	48071	2.95
CHEROKEE	TX	48073	2.35
CHILDRESS	TX	48075	1.95
CLAY	TX	48077	1.95
COCHRAN	TX	48079	1.60
COKE	TX	48081	2.10
COLEMAN	TX	48083	2.10
COLLIN	TX	48085	1.95
COLLINGSWORTH	TX	48087	1.95
COLORADO	TX	48089	2.75
COMAL	TX	48091	2.55
COMANCHE	TX	48093	2.10
CONCHO	TX	48095	2.10
COOKE	TX	48097	1.95
CORYELL	TX	48099	2.35
COTTLE	TX	48101	1.95
CRANE	TX	48103	2.10
CROCKETT	TX	48105	2.35
CROSBY	TX	48107	1.95
CULBERSON	TX	48109	1.95
DALLAM	TX	48111	1.90
DALLAS	TX	48113	2.10
DAWSON	TX	48115	1.95
DEAF SMITH	TX	48117	1.60
DELTA	TX	48119	1.95
DENTON	TX	48121	1.95
DE WITT	TX	48123	2.75
DICKENS	TX	48125	1.95
DIMMIT	TX	48127	2.75
DONLEY	TX	48129	1.95
DUVAL	TX	48131	2.95
EASTLAND	TX	48133	2.10
ECTOR	TX	48135	2.10
EDWARDS	TX	48137	2.35
ELLIS	TX	48139	2.10

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
EL PASO	TX	48141	1.75
ERATH	TX	48143	2.10
FALLS	TX	48145	2.35
FANNIN	TX	48147	1.95
FAYETTE	TX	48149	2.75
FISHER	TX	48151	2.10
FLOYD	TX	48153	1.95
FOARD	TX	48155	1.95
FORT BEND	TX	48157	2.95
FRANKLIN	TX	48159	1.95
FREESTONE	TX	48161	2.35
FRIO	TX	48163	2.75
GAINES	TX	48165	1.95
GALVESTON	TX	48167	2.95
GARZA	TX	48169	1.95
GILLESPIE	TX	48171	2.35
GLASSCOCK	TX	48173	2.10
GOLIAD	TX	48175	2.95
GONZALES	TX	48177	2.75
GRAY	TX	48179	1.95
GRAYSON	TX	48181	1.95
GREGG	TX	48183	2.10
GRIMES	TX	48185	2.75
GUADALUPE	TX	48187	2.65
HALE	TX	48189	1.95
HALL	TX	48191	1.95
HAMILTON	TX	48193	2.10
HANSFORD	TX	48195	1.90
HARDEMAN	TX	48197	1.95
HARDIN	TX	48199	2.95
HARRIS	TX	48201	2.95
HARRISON	TX	48203	2.10
HARTLEY	TX	48205	1.90
HASKELL	TX	48207	1.95
HAYS	TX	48209	2.55
HEMPHILL	TX	48211	1.90
HENDERSON	TX	48213	2.35
HIDALGO	TX	48215	3.15
HILL	TX	48217	2.35
HOCKLEY	TX	48219	1.95
HOOD	TX	48221	2.10
HOPKINS	TX	48223	1.95
HOUSTON	TX	48225	2.55
HOWARD	TX	48227	2.10
HUDSPETH	TX	48229	1.75
HUNT	TX	48231	1.95
HUTCHINSON	TX	48233	1.90
IRION	TX	48235	2.35
JACK	TX	48237	1.95
JACKSON	TX	48239	2.95
JASPER	TX	48241	2.75
JEFF DAVIS	TX	48243	2.10
JEFFERSON	TX	48245	2.95
JIM HOGG	TX	48247	2.95
JIM WELLS	TX	48249	2.95
JOHNSON	TX	48251	2.10
JONES	TX	48253	2.10
KARNES	TX	48255	2.75
KAUFMAN	TX	48257	2.10
KENDALL	TX	48259	2.55
KENEDY	TX	48261	3.15
KENT	TX	48263	2.10
KERR	TX	48265	2.55
KIMBLE	TX	48267	2.35
KING	TX	48269	1.95
KINNEY	TX	48271	2.65
KLEBERG	TX	48273	3.15
KNOX	TX	48275	1.95
LAMAR	TX	48277	1.95
LAMB	TX	48279	1.60
LAMPASAS	TX	48281	2.35
LA SALLE	TX	48283	2.75

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
LAVACA	TX	48285	2.75
LEE	TX	48287	2.65
LEON	TX	48289	2.55
LIBERTY	TX	48291	2.95
LIMESTONE	TX	48293	2.35
LIPSCOMB	TX	48295	1.90
LIVE OAK	TX	48297	2.95
LLANO	TX	48299	2.35
LOVING	TX	48301	1.95
LUBBOCK	TX	48303	1.95
LYNN	TX	48305	1.95
MCCULLOCH	TX	48307	2.10
MCLENNAN	TX	48309	2.35
MCMULLEN	TX	48311	2.75
MADISON	TX	48313	2.65
MARION	TX	48315	2.10
MARTIN	TX	48317	2.10
MASON	TX	48319	2.35
MATAGORDA	TX	48321	2.95
MAVERICK	TX	48323	2.65
MEDINA	TX	48325	2.65
MENARD	TX	48327	2.35
MIDLAND	TX	48329	2.10
MILAM	TX	48331	2.55
MILLS	TX	48333	2.10
MITCHELL	TX	48335	2.10
MONTAGUE	TX	48337	1.95
MONTGOMERY	TX	48339	2.95
MOORE	TX	48341	1.90
MORRIS	TX	48343	1.95
MOTLEY	TX	48345	1.95
NACOGDOCHES	TX	48347	2.55
NAVARRO	TX	48349	2.35
NEWTON	TX	48351	2.75
NOLAN	TX	48353	2.10
NUECES	TX	48355	3.15
OCHILTREE	TX	48357	1.90
OLDHAM	TX	48359	1.90
ORANGE	TX	48361	2.95
PALO PINTO	TX	48363	2.10
PANOLA	TX	48365	2.35
PARKER	TX	48367	2.10
PARMER	TX	48369	1.60
PECOS	TX	48371	2.35
POLK	TX	48373	2.75
POTTER	TX	48375	1.95
PRESIDIO	TX	48377	2.10
RAINS	TX	48379	1.95
RANDALL	TX	48381	1.95
REAGAN	TX	48383	2.35
REAL	TX	48385	2.55
RED RIVER	TX	48387	1.95
REEVES	TX	48389	2.10
REFUGIO	TX	48391	2.95
ROBERTS	TX	48393	1.90
ROBERTSON	TX	48395	2.55
ROCKWALL	TX	48397	1.95
RUNNELS	TX	48399	2.10
RUSK	TX	48401	2.35
SABINE	TX	48403	2.65
SAN AUGUSTINE	TX	48405	2.65
SAN JACINTO	TX	48407	2.75
SAN PATRICIO	TX	48409	2.95
SAN SABA	TX	48411	2.10
SCHLEICHER	TX	48413	2.35
SCURRY	TX	48415	2.10
SHACKELFORD	TX	48417	2.10
SHELBY	TX	48419	2.55
SHERMAN	TX	48421	1.90
SMITH	TX	48423	2.35
SOMERVELL	TX	48425	2.10
STARR	TX	48427	2.95

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
STEPHENS	TX	48429	2.10
STERLING	TX	48431	2.10
STONEWALL	TX	48433	2.10
SUTTON	TX	48435	2.35
SWISHER	TX	48437	1.95
TARRANT	TX	48439	2.10
TAYLOR	TX	48441	2.10
TERRELL	TX	48443	2.35
TERRY	TX	48445	1.95
THROCKMORTON	TX	48447	1.95
TITUS	TX	48449	1.95
TOM GREEN	TX	48451	2.10
TRAVIS	TX	48453	2.55
TRINITY	TX	48455	2.65
TYLER	TX	48457	2.75
UPSHUR	TX	48459	2.10
UPTON	TX	48461	2.35
UVALDE	TX	48463	2.65
VAL VERDE	TX	48465	2.35
VAN ZANDT	TX	48467	2.10
VICTORIA	TX	48469	2.95
WALKER	TX	48471	2.75
WALLER	TX	48473	2.75
WARD	TX	48475	2.10
WASHINGTON	TX	48477	2.75
WEBB	TX	48479	2.75
WHARTON	TX	48481	2.95
WHEELER	TX	48483	1.90
WICHITA	TX	48485	1.95
WILBARGER	TX	48487	1.95
WILLACY	TX	48489	3.15
WILLIAMSON	TX	48491	2.55
WILSON	TX	48493	2.75
WINKLER	TX	48495	1.95
WISE	TX	48497	1.95
WOOD	TX	48499	1.95
YOAKUM	TX	48501	1.95
YOUNG	TX	48503	1.95
ZAPATA	TX	48505	2.95
ZAVALA	TX	48507	2.65
BEAVER	UT	49001	1.50
BOX ELDER	UT	49003	1.50
CACHE	UT	49005	1.50
CARBON	UT	49007	1.80
DAGGETT	UT	49009	1.50
DAVIS	UT	49011	1.50
DUCHESNE	UT	49013	1.50
EMERY	UT	49015	1.80
GARFIELD	UT	49017	1.80
GRAND	UT	49019	1.90
IRON	UT	49021	1.80
JUAB	UT	49023	1.50
KANE	UT	49025	1.90
MILLARD	UT	49027	1.50
MORGAN	UT	49029	1.50
PIUTE	UT	49031	1.50
RICH	UT	49033	1.50
SALT LAKE	UT	49035	1.50
SAN JUAN	UT	49037	1.90
SANPETE	UT	49039	1.50
SEVIER	UT	49041	1.50
SUMMIT	UT	49043	1.50
TOOELE	UT	49045	1.50
UINTAH	UT	49047	1.80
UTAH	UT	49049	1.50
WASATCH	UT	49051	1.50
WASHINGTON	UT	49053	1.90
WAYNE	UT	49055	1.80
WEBER	UT	49057	1.50
ADDISON	VT	50001	2.05
BENNINGTON	VT	50003	2.15
CALEDONIA	VT	50005	1.95

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
CHITTENDEN	VT	50007	2.05
ESSEX	VT	50009	1.95
FRANKLIN	VT	50011	1.95
GRAND ISLE	VT	50013	1.95
LAMOILLE	VT	50015	1.95
ORANGE	VT	50017	2.05
ORLEANS	VT	50019	1.95
RUTLAND	VT	50021	2.05
WASHINGTON	VT	50023	2.05
WINDHAM	VT	50025	2.30
WINDSOR	VT	50027	2.15
ACCOMACK	VA	51001	2.10
ALBEMARLE	VA	51003	2.15
ALLEGHANY	VA	51005	2.15
AMELIA	VA	51007	2.20
AMHERST	VA	51009	2.15
APPOMATTOX	VA	51011	2.15
ARLINGTON	VA	51013	2.05
AUGUSTA	VA	51015	2.15
BATH	VA	51017	2.15
BEDFORD	VA	51019	2.15
BLAND	VA	51021	2.25
BOTETOURT	VA	51023	2.15
BRUNSWICK	VA	51025	2.35
BUCHANAN	VA	51027	2.25
BUCKINGHAM	VA	51029	2.15
CAMPBELL	VA	51031	2.15
CAROLINE	VA	51033	2.20
CARROLL	VA	51035	2.25
CHARLES CITY	VA	51036	2.20
CHARLOTTE	VA	51037	2.15
CHESTERFIELD	VA	51041	2.20
CLARKE	VA	51043	2.05
CRAIG	VA	51045	2.15
CULPEPER	VA	51047	2.05
CUMBERLAND	VA	51049	2.15
DICKENSON	VA	51051	2.25
DINWIDDIE	VA	51053	2.35
ESSEX	VA	51057	2.20
FAIRFAX	VA	51059	2.05
FAUQUIER	VA	51061	2.05
FLOYD	VA	51063	2.15
FLUVANNA	VA	51065	2.15
FRANKLIN	VA	51067	2.15
FREDERICK	VA	51069	2.05
GILES	VA	51071	2.15
GLOUCESTER	VA	51073	2.20
GOOCHLAND	VA	51075	2.20
GRAYSON	VA	51077	2.25
GREENE	VA	51079	2.15
GREENSVILLE	VA	51081	2.35
HALIFAX	VA	51083	2.35
HANOVER	VA	51085	2.20
HENRICO	VA	51087	2.20
HENRY	VA	51089	2.35
HIGHLAND	VA	51091	2.15
ISLE OF WIGHT	VA	51093	2.55
JAMES CITY	VA	51095	2.55
KING AND QUEEN	VA	51097	2.20
KING GEORGE	VA	51099	2.05
KING WILLIAM	VA	51101	2.20
LANCASTER	VA	51103	2.20
LEE	VA	51105	2.25
LOUDOUN	VA	51107	2.05
LOUISA	VA	51109	2.15
LUNENBURG	VA	51111	2.35
MADISON	VA	51113	2.15
MATHEWS	VA	51115	2.20
MECKLENBURG	VA	51117	2.35
MIDDLESEX	VA	51119	2.20
MONTGOMERY	VA	51121	2.15
NELSON	VA	51125	2.15

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
NEW KENT	VA	51127	2.20
NORTHAMPTON	VA	51131	2.10
NORTHUMBERLAND	VA	51133	2.20
NOTTOWAY	VA	51135	2.35
ORANGE	VA	51137	2.15
PAGE	VA	51139	2.05
PATRICK	VA	51141	2.35
PITTSYLVANIA	VA	51143	2.35
POWHATAN	VA	51145	2.20
PRINCE EDWARD	VA	51147	2.15
PRINCE GEORGE	VA	51149	2.35
PRINCE WILLIAM	VA	51153	2.05
PULASKI	VA	51155	2.15
RAPPAHANNOCK	VA	51157	2.05
RICHMOND	VA	51159	2.20
ROANOKE	VA	51161	2.15
ROCKBRIDGE	VA	51163	2.15
ROCKINGHAM	VA	51165	2.15
RUSSELL	VA	51167	2.25
SCOTT	VA	51169	2.25
SHENANDOAH	VA	51171	2.05
SMYTH	VA	51173	2.25
SOUTHAMPTON	VA	51175	2.55
SPOTSYLVANIA	VA	51177	2.15
STAFFORD	VA	51179	2.05
SURRY	VA	51181	2.55
SUSSEX	VA	51183	2.35
TAZEWELL	VA	51185	2.25
WARREN	VA	51187	2.05
WASHINGTON	VA	51191	2.25
WESTMORELAND	VA	51193	2.05
WISE	VA	51195	2.25
WYTHE	VA	51197	2.25
YORK	VA	51199	2.55
ALEXANDRIA CITY	VA	51510	2.05
BEDFORD CITY	VA	51515	2.15
BRISTOL CITY	VA	51520	2.25
BUENA VISTA CITY	VA	51530	2.15
CHARLOTTESVILLE CITY	VA	51540	2.15
CHESAPEAKE CITY	VA	51550	2.55
CLIFTON FORGE CITY	VA	51560	2.15
COLONIAL HEIGHTS CITY	VA	51570	2.30
COVINGTON CITY	VA	51580	2.15
DANVILLE CITY	VA	51590	2.35
EMPORIA CITY	VA	51595	2.35
FAIRFAX CITY	VA	51600	2.05
FALLS CHURCH CITY	VA	51610	2.05
FRANKLIN CITY	VA	51620	2.55
FREDERICKSBURG CITY	VA	51630	2.15
GALAX CITY	VA	51640	2.25
HAMPTON CITY	VA	51650	2.55
HARRISONBURG CITY	VA	51660	2.15
HOPEWELL CITY	VA	51670	2.35
LEXINGTON CITY	VA	51678	2.15
LYNCHBURG CITY	VA	51680	2.15
MANASSAS CITY	VA	51683	2.05
MANASSAS PARK CITY	VA	51685	2.05
MARTINSVILLE CITY	VA	51690	2.35
NEWPORT NEWS CITY	VA	51700	2.55
NORFOLK CITY	VA	51710	2.55
NORTON CITY	VA	51720	2.25
PETERSBURG CITY	VA	51730	2.35
POQUOSON CITY	VA	51735	2.55
PORTSMOUTH CITY	VA	51740	2.55
RADFORD CITY	VA	51750	2.15
RICHMOND CITY	VA	51760	2.20
ROANOKE CITY	VA	51770	2.15
SALEM CITY	VA	51775	2.15
STAUNTON CITY	VA	51790	2.15
SUFFOLK CITY	VA	51800	2.55
VIRGINIA BEACH CITY	VA	51810	2.55
WAYNESBORO CITY	VA	51820	2.15

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
WILLIAMSBURG CITY	VA	51830	2.55
WINCHESTER CITY	VA	51840	2.05
ADAMS	WA	53001	1.35
ASOTIN	WA	53003	1.35
BENTON	WA	53005	1.30
CHELAN	WA	53007	1.30
CLALLAM	WA	53009	1.45
CLARK	WA	53011	1.45
COLUMBIA	WA	53013	1.35
COWLITZ	WA	53015	1.45
DOUGLAS	WA	53017	1.30
FERRY	WA	53019	1.35
FRANKLIN	WA	53021	1.35
GARFIELD	WA	53023	1.35
GRANT	WA	53025	1.30
GRAYS HARBOR	WA	53027	1.45
ISLAND	WA	53029	1.45
JEFFERSON	WA	53031	1.45
KING	WA	53033	1.45
KITSAP	WA	53035	1.45
KITTITAS	WA	53037	1.30
KLICKITAT	WA	53039	1.30
LEWIS	WA	53041	1.45
LINCOLN	WA	53043	1.35
MASON	WA	53045	1.45
OKANOGAN	WA	53047	1.30
PACIFIC	WA	53049	1.45
PEND OREILLE	WA	53051	1.35
PIERCE	WA	53053	1.45
SAN JUAN	WA	53055	1.45
SKAGIT	WA	53057	1.20
SKAMANIA	WA	53059	1.45
SNOHOMISH	WA	53061	1.45
SPOKANE	WA	53063	1.35
STEVENS	WA	53065	1.35
THURSTON	WA	53067	1.45
WAHKIAKUM	WA	53069	1.45
WALLA WALLA	WA	53071	1.35
WHATCOM	WA	53073	1.20
WHITMAN	WA	53075	1.35
YAKIMA	WA	53077	1.30
BARBOUR	WV	54001	2.05
BERKELEY	WV	54003	2.05
BOONE	WV	54005	2.20
BRAXTON	WV	54007	2.20
BROOKE	WV	54009	1.95
CABELL	WV	54011	2.20
CALHOUN	WV	54013	2.05
CLAY	WV	54015	2.20
DODDRIDGE	WV	54017	2.05
FAYETTE	WV	54019	2.20
GILMER	WV	54021	2.05
GRANT	WV	54023	2.05
GREENBRIER	WV	54025	2.15
HAMPSHIRE	WV	54027	2.05
HANCOCK	WV	54029	1.95
HARDY	WV	54031	2.05
HARRISON	WV	54033	2.05
JACKSON	WV	54035	2.05
JEFFERSON	WV	54037	2.05
KANAWHA	WV	54039	2.20
LEWIS	WV	54041	2.05
LINCOLN	WV	54043	2.20
LOGAN	WV	54045	2.20
MCDOWELL	WV	54047	2.20
MARION	WV	54049	1.95
MARSHALL	WV	54051	1.95
MASON	WV	54053	2.05
MERCER	WV	54055	2.15
MINERAL	WV	54057	2.05
MINGO	WV	54059	2.20
MONONGALIA	WV	54061	1.95

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
MONROE	WV	54063	2.15
MORGAN	WV	54065	2.05
NICHOLAS	WV	54067	2.20
OHIO	WV	54069	1.95
PENDLETON	WV	54071	2.15
PLEASANTS	WV	54073	2.05
POCAHONTAS	WV	54075	2.15
PRESTON	WV	54077	1.95
PUTNAM	WV	54079	2.20
RALEIGH	WV	54081	2.20
RANDOLPH	WV	54083	2.05
RITCHIE	WV	54085	2.05
ROANE	WV	54087	2.20
SUMMERS	WV	54089	2.15
TAYLOR	WV	54091	1.95
TUCKER	WV	54093	2.05
TYLER	WV	54095	2.05
UPSHUR	WV	54097	2.05
WAYNE	WV	54099	2.20
WEBSTER	WV	54101	2.05
WETZEL	WV	54103	1.95
WIRT	WV	54105	2.05
WOOD	WV	54107	2.05
WYOMING	WV	54109	2.20
ADAMS	WI	55001	1.70
ASHLAND	WI	55003	1.60
BARRON	WI	55005	1.60
BAYFIELD	WI	55007	1.65
BROWN	WI	55009	1.80
BUFFALO	WI	55011	1.60
BURNETT	WI	55013	1.60
CALUMET	WI	55015	1.80
CHIPPEWA	WI	55017	1.60
CLARK	WI	55019	1.60
COLUMBIA	WI	55021	1.70
CRAWFORD	WI	55023	1.70
DANE	WI	55025	1.80
DODGE	WI	55027	1.80
DOOR	WI	55029	1.80
DOUGLAS	WI	55031	1.65
DUNN	WI	55033	1.60
EAU CLAIRE	WI	55035	1.60
FLORENCE	WI	55037	1.60
FOND DU LAC	WI	55039	1.80
FOREST	WI	55041	1.60
GRANT	WI	55043	1.80
GREEN	WI	55045	1.80
GREEN LAKE	WI	55047	1.70
IOWA	WI	55049	1.80
IRON	WI	55051	1.60
JACKSON	WI	55053	1.60
JEFFERSON	WI	55055	1.80
JUNEAU	WI	55057	1.70
KENOSHA	WI	55059	1.95
KEWAUNEE	WI	55061	1.80
LA CROSSE	WI	55063	1.60
LAFAYETTE	WI	55065	1.80
LANGLADE	WI	55067	1.60
LINCOLN	WI	55069	1.60
MANITOWOC	WI	55071	1.80
MARATHON	WI	55073	1.60
MARINETTE	WI	55075	1.60
MARQUETTE	WI	55077	1.70
MENOMINEE	WI	55078	1.70
MILWAUKEE	WI	55079	1.95
MONROE	WI	55081	1.60
OCONTO	WI	55083	1.70
ONEIDA	WI	55085	1.60
OUTAGAMIE	WI	55087	1.70
OZAUKEE	WI	55089	1.95
PEPIN	WI	55091	1.60
PIERCE	WI	55093	1.60

County/Parish/City	State	FIPS__Code	Class I differential adjusted for location
POLK	WI	55095	1.60
PORTAGE	WI	55097	1.60
PRICE	WI	55099	1.60
RACINE	WI	55101	1.95
RICHLAND	WI	55103	1.70
ROCK	WI	55105	1.80
RUSK	WI	55107	1.60
ST. CROIX	WI	55109	1.60
SAUK	WI	55111	1.70
SAWYER	WI	55113	1.60
SHAWANO	WI	55115	1.70
SHEBOYGAN	WI	55117	1.95
TAYLOR	WI	55119	1.60
TREMPEALEAU	WI	55121	1.60
VERNON	WI	55123	1.70
VILAS	WI	55125	1.60
WALWORTH	WI	55127	1.80
WASHBURN	WI	55129	1.60
WASHINGTON	WI	55131	1.80
WAUKESHA	WI	55133	1.80
WAUPACA	WI	55135	1.70
WAUSHARA	WI	55137	1.70
WINNEBAGO	WI	55139	1.70
WOOD	WI	55141	1.60
ALBANY	WY	56001	1.55
BIG HORN	WY	56003	1.40
CAMPBELL	WY	56005	1.40
CARBON	WY	56007	1.55
CONVERSE	WY	56009	1.40
CROOK	WY	56011	1.40
FREMONT	WY	56013	1.40
GOSHEN	WY	56015	1.40
HOT SPRINGS	WY	56017	1.40
JOHNSON	WY	56019	1.40
LARAMIE	WY	56021	1.55
LINCOLN	WY	56023	1.40
NATRONA	WY	56025	1.40
NIOBRARA	WY	56027	1.40
PARK	WY	56029	1.40
PLATTE	WY	56031	1.55
SHERIDAN	WY	56033	1.50
SUBLETTE	WY	56035	1.40
SWEETWATER	WY	56037	1.50
TETON	WY	56039	1.40
UINTA	WY	56041	1.50
WASHAKIE	WY	56043	1.40
WESTON	WY	56045	1.40

§ 1000.53 Announcement of class prices, component prices, and advanced pricing factors.

(a) On or before the 5th day of the month, the market administrator for each Federal milk marketing order shall announce the following prices (as applicable to that order) for the preceding month:

(1) The Class II price;
(2) The Class II butterfat price;
(3) The Class III price;
(4) The Class III skim milk price;
(5) The Class IV price;
(6) The Class IV skim milk price;
(7) The butterfat price;
(8) The nonfat solids price;
(9) The protein price;
(10) The other solids price; and
(11) The somatic cell adjustment rate.

(b) On or before the 23rd day of the month, the market administrator for each Federal milk marketing order shall announce the following prices and pricing factors for the following month:

(1) The Class I price;
(2) The Class I skim milk price;
(3) The Class I butterfat price;
(4) The Class II skim milk price;
(5) The Class II nonfat solids price; and
(6) The advanced pricing factors described in § 1000.50(q).

§ 1000.54 Equivalent price.

If for any reason a price or pricing constituent required for computing the prices described in § 1000.50 is not available, the market administrator shall use a price or pricing constituent determined by the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to be equivalent to the price or pricing constituent that is required.

Subpart H—Payments for Milk

§ 1000.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§ _____.71, _____.76, and _____.77 of each Federal milk order and out of which the market administrator shall make all payments pursuant to §§ _____.72 and _____.77 of each Federal milk order. Payments due any handler shall

be offset by any payments due from that handler.

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

On or before the 25th day after the end of the month (except as provided in § 1000.90), the operator of a partially regulated distributing plant, other than a plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program, shall pay to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section or, if the handler submits the information specified in §§ _____.30(b) and _____.31(b) of the order, the handler may elect to pay the amount computed pursuant to paragraph (b) of this section. A partially regulated distributing plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program shall pay the amount computed pursuant to paragraph (c) of this section.

(a) The payment under this paragraph shall be an amount resulting from the following computations:

(1) From the plant's route disposition in the marketing area:

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants, plants fully regulated under other Federal orders, and handlers described in § 1000.9(c) and § 1135.11, except those receipts subtracted under a similar provision of another Federal milk order;

(ii) Subtract receipts of fluid milk products from another nonpool plant that is not a plant fully regulated under another Federal order to the extent that an equivalent amount of fluid milk products disposed of to the nonpool plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order; and

(iii) Subtract the pounds of reconstituted milk made from nonfluid milk products which are disposed of as route disposition in the marketing area;

(2) For orders with multiple component pricing, compute a Class I differential price by subtracting Class III price from the current month's Class I price. Multiply the pounds remaining after the computation in paragraph (a)(1)(iii) of this section by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders with skim milk and butterfat pricing, multiply the remaining pounds by the amount by which the Class I price exceeds the uniform price, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I price nor the adjusted uniform price differential shall be less than the lowest announced class price; and

(4) Unless the payment option described in paragraph (d) is selected, add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) of this section by any positive difference between the Class I price applicable at the location of the partially regulated distributing plant (less $1.00 if the reconstituted milk is labeled as such) and the Class IV price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § _____.60 of the order for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the plant from a pool plant, a plant fully regulated under another Federal order, and handlers described in § 1000.9(c) and § 1135.11 shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or a plant fully regulated under another Federal order shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from the pool plant and plants fully regulated under other Federal orders that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed pursuant to § _____.60 of the order for the partially regulated distributing plant shall be priced at the statistical uniform price or uniform price, whichever is applicable, of the respective order regulating the handling of milk at the receiving plant, with such statistical uniform price or uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest announced class price of the respective order); and

(iii) If the operator of the partially regulated distributing plant so requests, the handler's value of milk determined pursuant to § _____.60 of the order shall include a value of milk determined for each nonpool plant that is not a plant fully regulated under another Federal order which serves as a supply plant for the partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of section 7(c) of the order subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ _____.30(b) and _____.31(b) of the order similar reports for each such nonpool supply plant;

(B) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § _____.60 for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments that were made for milk that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of the nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another Federal order under which the plant is also a partially regulated distributing plant and, if paragraph (b)(1)(iii) of this section applies, payments made by the operator of the nonpool supply plant to the producer-settlement fund of any order.

(c) The operator of a partially regulated distributing plant that is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25th day after the end of the month (except as provided in § 1000.90) to the market administrator for the producer-settlement fund an amount computed as follows:

After completing the computations described in paragraphs (a)(1)(i) and (ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the Federal order Class I price applicable at the location of the plant.

(d) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients that are reconstituted for fluid use. Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the positive difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed and the Class IV price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

§ 1000.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1000.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each succeeding month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Subpart I—Administrative Assessment and Marketing Service Deduction

§ 1000.85 Assessment for order administration.

On or before the payment receipt date specified under § _____.71 of each Federal milk order each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 5 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § _____.60(d) and (e) of parts 1005, 1006, and 1007 or § _____.60(h) and (i) of parts 1001, 1030, 1032, 1033, 1124, 1126, 1131, and 1135; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i)and (ii).

§ 1000.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of such handler's own production) pursuant to § _____.73 of each Federal milk order shall deduct an amount specified by the market administrator that is no more than 7 cents per hundredweight and shall pay the amount deducted to the market administrator not later than the payment receipt date specified under § _____.71 of each Federal milk order. The money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. The services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator.

(b) In the case of producers for whom the market administrator has determined that a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and the producers. On or before the 15th day after the end of the month (except as provided in § 1000.90), such deductions shall be paid to the cooperative association rendering the services accompanied by a statement showing the amount of any deductions and the amount of milk for which the deduction was computed for each producer. These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.

Subpart J—Miscellaneous Provisions

§ 1000.90 Dates.

If a date required for a payment contained in a Federal milk order falls on a Saturday, Sunday, or national holiday, such payment or announcement will be due on the next day that the market administrator's office is open for public business.

§ 1000.91 [Reserved]

§ 1000.92 [Reserved]

§ 1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. chapter 35 and have been assigned OMB control number 0581–0032.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1001.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1001, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1001.2 Northeast marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and District of Columbia

All of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and the District of Columbia.

Maryland Counties

All of the State of Maryland except the counties of Allegany and Garrett.

New York Counties, Cities, and Townships

All counties within the State of New York except Allegany, Cattaraugus, Chatauqua, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, and Wyoming; the townships of Conquest, Montezuma, Sterling and Victory in Cayuga County; the city of Hornell, and the townships of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartsville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; and the townships of Italy, Middlesex, and Potter in Yates County.

Pennsylvania Counties

Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia, and York.

Virginia Counties and Cities

Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

§ 1001.3 Route disposition.

See § 1000.3.

§ 1001.4 Plant.

(a) Except as provided in paragraph (b) of this section, plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition;

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim milk; or

(3) Bulk reload points where milk is transferred from one tank truck to another while en route from dairy farmers' farms to a plant. If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility shall be treated as a reload point. The cooling of milk, collection of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

§ 1001.5 Distributing plant.

See § 1000.5.

§ 1001.6 Supply plant.

See § 1000.6.

§ 1001.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant described in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which fluid milk products are transferred or diverted to plants described in paragraph (a) or (b) of this section subject to the additional conditions described in this paragraph. In the case of a supply plant operated by a cooperative association handler described in § 1000.9(c), fluid milk products that the cooperative delivers to pool plants directly from producers' farms shall be treated as if transferred from the cooperative association's plant for the purpose of meeting the shipping requirements of this paragraph.

(1) During the months of August and December, such shipments must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(2) During the months of September through November, such shipments must equal not less than 20 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(3) A plant which meets the shipping requirements of this paragraph during each of the months of August through December shall be a pool plant during the following months of January through July unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. The shipping requirement for any plant which has not met the requirements of paragraphs (c)(1) and (c)(2) of this section must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during each of the months of January through July in order for the plant to be a pool plant in each of those months;

(4) If milk is delivered directly from producers' farms that are located outside of the states included in the marketing area or outside Maine or West Virginia, such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and

(5) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (c)(1) and (2) of this section.

(d) [Reserved]

(e) Two or more plants that are located in the marketing area and operated by the same handler may qualify as a unit by meeting the total and in-area route distribution requirements specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit qualifies as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit; and

(3) A written request to form a unit, or to add or remove plants from a unit, or to cancel a unit, must be filed with the market administrator prior to the first day of the month for which unit formation is to be effective.

(f) Two or more supply plants operated by the same handler, or by one or more cooperative associations, may qualify for pooling as a system of plants by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) A supply plant system will be effective for the period of August 1 through July 31 of the following year. Written notification must be given to the market administrator listing the plants to be included in the system prior to the first day of July preceding the effective date of the system. The plants included in the system shall be listed in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(2) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the plant subsequently fails to qualify for pooling, the handler submits a written notification to the market administrator prior to the first day of the month that the plant be deleted from the system, or that the system be discontinued. Any plant that has been so deleted from the system, or that has failed to qualify as a pool plant in any month, will not be part of the system for the remaining months through July. For any system that qualifies in August, no plant may be added in any subsequent month through the following July unless the plant replaces another plant in the system that has ceased operations and the market administrator is notified of such replacement prior to the first day of the month for which it is to be effective.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;
(2) An exempt plant as defined in § 1000.8(e);
(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;
(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;
(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;
(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and
(7) That portion of a pool plant designated as a ''nonpool plant'' that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1001.8 Nonpool plant.

See § 1000.8.

§ 1001.9 Handler.

See § 1000.9.

§ 1001.10 Producer-handler.

Producer-handler means a person who:
(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area during the month;
(b) Receives milk solely from own farm production or receives milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;
(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;
(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and
(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1001.11 [Reserved]

§ 1001.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:
(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1001.13; or
(2) Received by a handler described in § 1000.9(c).
(b) Producer shall not include a dairy farmer described in paragraphs (b)(1) through (6) of this section. A dairy farmer described in paragraphs (b)(5) or (6) of this section shall be known as a *dairy farmer for other markets.*
(1) A producer-handler as defined in any Federal order;
(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1001.13(d);
(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;
(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order;
(5) For any month of December through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month, either of the 2 preceding months, or during any of the preceding months of July through November; and
(6) For any month of July through November, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under this order or any other Federal milk order, during the same month.

§ 1001.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:
(a) Received by the operator of a pool plant directly from a producer or from a handler described in § 1000.9(c). Any milk which is picked up from the producer's farm in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;
(b) Received by the operator of a pool plant or a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants subject to the following conditions:
(1) The producers whose farms are outside of the states included in the marketing area and outside the states of Maine or West Virginia shall be organized into state units and each such unit shall be reported separately; and
(2) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1001.7(c);
(c) Diverted by a proprietary pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or
(d) Diverted by the operator of a pool plant or by a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:
(1) Milk of a dairy farmer shall not be eligible for diversion unless milk of

such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant; and

(2) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1001.14 Other source milk.

See § 1000.14.

§ 1001.15 Fluid milk product.

See § 1000.15.

§ 1001.16 Fluid cream product.

See § 1000.16.

§ 1001.17 [Reserved]

§ 1001.18 Cooperative association.

See § 1000.18.

§ 1001.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1001.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of nonfat solids other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

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

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

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

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

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

§ 1001.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1001.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1001.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1001.32 Other reports.

In addition to the reports required pursuant to §§ 1001.30 and 1001.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1001.40 Classes of utilization.

See § 1000.40.

§ 1001.41 [Reserved]

§ 1001.42 Classification of transfers and diversions.

See § 1000.42.

§ 1001.43 General classification rules.

See § 1000.43.

§ 1001.44 Classification of producer milk.

See § 1000.44.

§ 1001.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1001.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1001.51 Class I differential and price.

The Class I differential shall be the differential established for Suffolk County, Massachusetts, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Suffolk County, Massachusetts.

§ 1001.52 Adjusted Class I differentials.

See § 1000.52.

§ 1001.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1001.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1001.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement

fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the *producer price differential* for the month.

§ 1001.62 Announcement of producer prices.

On or before the 13th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

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

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

Payments for Milk

§ 1001.70 Producer-settlement fund.

See § 1000.70.

§ 1001.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1001.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1001.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

§ 1001.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1001.71(b) exceeds the amount computed pursuant to § 1001.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1001.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the day after the payment date required in § 1001.72 in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received by the producer price differential for the month as adjusted pursuant to § 1001.75;

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

(iii) Multiply the pounds of protein received by the protein price for the month;

(iv) Multiply the pounds of other solids received by the other solids price for the month; and

(v) Add the amounts computed in paragraphs (a)(2)(i) through (iv) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month at the receiving plant;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month at the receiving plant;

(iii) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iv) Multiply the pounds of butterfat in Class II times the Class II butterfat price;

(v) Multiply the pounds of nonfat solids in Class IV milk by the nonfat solids price for the month;

(vi) Multiply the pounds of butterfat in Class III and IV milk by the butterfat price for the month;

(vii) Multiply the pounds of protein in Class III milk by the protein price for the month;

(viii) Multiply the pounds of other solids in Class III milk by the other solids price for the month; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1001.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

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

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

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

(7) The net amount of payment to the producer or cooperative association.

§ 1001.74 [Reserved]

§ 1001.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1001.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1001.73 and 1000.76.

§ 1001.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1001.77 Adjustment of accounts.

See § 1000.77.

§ 1001.78 Charges on overdue accounts.

See § 1000.78.

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See § 1000.86.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1005, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1005.2 Appalachian marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Georgia Counties

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Indiana Counties

Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Greene, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Scott, Spencer, Sullivan, Vanderburgh, Warrick, and Washington.

Kentucky Counties

Adair, Anderson, Bath, Bell, Bourbon, Boyle, Breathitt, Breckinridge, Bullitt, Butler, Carroll, Carter, Casey, Clark, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Gallatin, Garrard, Grayson, Green, Hancock, Hardin, Harlan, Hart, Henderson, Henry, Hopkins, Jackson, Jefferson, Jessamine, Knott, Knox, Larue, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Marion, McCreary, McLean, Meade, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Union, Washington, Wayne, Webster, Whitley, Wolfe, and Woodford.

North Carolina and South Carolina

All of the States of North Carolina and South Carolina.

Tennessee Counties

Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

Virginia Counties and Cities

Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, and Wise; and the cities of Bristol and Norton.

West Virginia Counties

McDowell and Mercer.

§ 1005.3 Route disposition.

See § 1000.3.

§ 1005.4 Plant.

See § 1000.4.

§ 1005.5 Distributing plant.

See § 1000.5.

§ 1005.6 Supply plant.

See § 1000.6.

§ 1005.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area or in the State of Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order; and

(6) That portion of a pool plant designated as a ''nonpool plant'' that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1005.8 Nonpool plant.

See § 1000.8.

§ 1005.9 Handler.

See § 1000.9.

§ 1005.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1005.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1005.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of July through December, not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 2 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1005.14 Other source milk.

See § 1000.14.

§ 1005.15 Fluid milk product.

See § 1000.15.

§ 1005.16 Fluid cream product.

See § 1000.16.

§ 1005.17 [Reserved]

§ 1005.18 Cooperative association.

See § 1000.18.

§ 1005.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1007, for which a transportation credit is requested pursuant to § 1005.82;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show

also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

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

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1005.7 and each handler described in § 1000.9 (c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1005.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1005.30, 1005.31, and 1005.32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

See § 1000.40.

§ 1005.41 [Reserved]

§ 1005.42 Classification of transfers and diversions.

See § 1000.42.

§ 1005.43 General classification rules.

See § 1000.43.

§ 1005.44 Classification of producer milk.

See § 1000.44.

§ 1005.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1005.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1005.51 Class I differential and price.

The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Mecklenburg County, North Carolina.

§ 1005.52 Adjusted Class I differentials.

See § 1000.52.

§ 1005.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1005.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1005.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1005.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to

§ 1005.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1005.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1005.61.

§ 1005.62 Announcement of uniform price, uniform butterfat price and uniform skim milk price.

On or before the 11th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The uniform price pursuant to § 1005.61 for such month;

(b) The uniform butterfat price pursuant to § 1005.61(b) for such month; and

(c) The uniform skim milk price pursuant to § 1005.61(c) for such month.

Payments for Milk

§ 1005.70 Producer-settlement fund.

See § 1000.70.

§ 1005.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1005.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1005.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1005.60(e).

§ 1005.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1005.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(b) exceeds the amount computed pursuant to § 1005.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1005.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

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

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1005.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month

from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1005.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

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

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

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

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

(7) The net amount of payment to the producer or cooperative association.

§ 1005.74 [Reserved]

§ 1005.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1005.50 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1005.73 and 1000.76.

§ 1005.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1005.77 Adjustment of accounts.

See § 1000.77.

§ 1005.78 Charges on overdue accounts.

See § 1000.78.

Marketwide Service Payments

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1005.81 and out of which shall be made the payments due handlers pursuant to § 1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.065 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1005.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits

resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month.

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1007, and allocated to Class I milk pursuant to § 1000.44(a)(9); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing area of Federal Order 1007.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset.

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the applicable Class I differential in § 1000.52 for the county in which the shipping plant is located from the Class I differential applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

See § 1000.85.

§ 1005.86 Deduction for marketing services.

See § 1000.86.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1006.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1006, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1006.2 Florida marketing area.

The marketing area means all the territory within the State of Florida, except the counties of Escambia, Okaloosa, Santa Rosa, and Walton, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions.

§ 1006.3 Route disposition.

See § 1000.3.

§ 1006.4 Plant.

See § 1000.4.

§ 1006.5 Distributing plant.

See § 1000.5.

§ 1006.6 Supply plant.

See § 1000.6.

§ 1006.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 60 percent or more of the total quantity of milk that is received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator

shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order.

§ 1006.8 Nonpool plant.

See § 1000.8.

§ 1006.9 Handler.

See § 1000.9.

§ 1006.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1006.11 [Reserved]

§ 1006.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1006.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1006.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1006.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1006.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1006.14 Other source milk.

See § 1000.14.

§ 1006.15 Fluid milk product.

See § 1000.15.

§ 1006.16 Fluid cream product.

See § 1000.16.

§ 1006.17 [Reserved]

§ 1006.18 Cooperative association.

See § 1000.18.

§ 1006.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1006.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

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

§ 1006.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1006.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1006.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1006.32 Other reports.

In addition to the reports required pursuant to §§ 1006.30 and 1006.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1006.40 Classes of utilization.

See § 1000.40.

§ 1006.41 [Reserved]

§ 1006.42 Classification of transfers and diversions.

See § 1000.42.

§ 1006.43 General classification rules.

See § 1000.43.

§ 1006.44 Classification of producer milk.

See § 1000.44.

§ 1006.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1006.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1006.51 Class I differential and price.

The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Hillsborough County, Florida.

§ 1006.52 Adjusted Class I differentials.

See § 1000.52.

§ 1006.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1006.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1006.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat

in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1006.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1006.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1006.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1006.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1006.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1006.61.

Payments for Milk

§ 1006.70 Producer-settlement fund.

See § 1000.70.

§ 1006.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1006.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1006.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1006.60(e).

§ 1006.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1006.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1006.71(b) exceeds the amount computed pursuant to § 1006.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1006.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payments.* (i) For each producer who has not discontinued shipments as of the 15th day of the month, payment shall be made so that it is received by the producer on or before the 20th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer; and

(ii) For each producer who has not discontinued shipments as of the last day of the month, payment shall be made so that it is received by the producer on or before the 5th day of the following month (except as provided in § 1000.90) for milk received from the 16th to the last day of the month at not less than 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1006.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

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

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1006.75; and

(iv) Add the amounts computed in paragraphs (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payments made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1006.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

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

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

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

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

(7) The net amount of payment to the producer or cooperative association.

§ 1006.74 [Reserved]

§ 1006.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1006.50 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1006.73 and 1000.76.

§ 1006.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1006.77 Adjustment of accounts.

See § 1000.77.

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See § 1000.78.

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PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1007.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1007, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1007.2 Southeast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Alabama, Arkansas, Louisiana, and Mississippi

All of the States of Alabama, Arkansas, Louisiana, and Mississippi.

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Georgia Counties

All of the State of Georgia except for the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Kentucky Counties

Allen, Ballard, Barren, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Logan, Lyon, Marshall, McCracken, Metcalfe, Monroe, Simpson, Todd, Trigg, and Warren.

Missouri Counties

Barry, Barton, Bollinger, Butler, Cape Girardeau, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Greene, Howell, Iron, Jasper, Laclede, Lawrence, Madison, McDonald, Mississippi, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Polk, Reynolds, Ripley, Scott, Shannon, St. Francois, Stoddard, Stone, Taney, Texas, Vernon, Washington, Wayne, Webster, and Wright.

Tennessee Counties

All of the State of Tennessee except for the counties of Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

§ 1007.3 Route disposition.

See § 1000.3.

§ 1007.4 Plant.

See § 1000.4.

§ 1007.5 Distributing plant.

See § 1000.5.

§ 1007.6 Supply plant.

See § 1000.6.

§ 1007.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit

pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this order, or such plant has automatic pooling status under such other order.

§ 1007.8 Nonpool plant.

See § 1000.8.

§ 1007.9 Handler.

See § 1000.9.

§ 1007.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1007.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1007.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1007.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of January through June, not less than 4 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through December, and 50 percent during the months of January through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through December, or 50 percent during the months of January through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk

diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1007.14 Other source milk.

See § 1000.14.

§ 1007.15 Fluid milk product.

See § 1000.15.

§ 1007.16 Fluid cream product.

See § 1000.16.

§ 1007.17 [Reserved]

§ 1007.18 Cooperative association.

See § 1000.18.

§ 1007.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1007.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1005, for which a transportation credit is requested pursuant to § 1007.82;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(8) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

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

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1007.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1007.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1007.30, 31, and 32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1007.40 Classes of utilization.

See § 1000.40.

§ 1007.41 [Reserved]

§ 1007.42 Classification of transfers and diversions.

See § 1000.42.

§ 1007.43 General classification rules.

See § 1000.43.

§ 1007.44 Classification of producer milk.

See § 1000.44.

§ 1007.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1007.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1007.51 Class I differential and price.

The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Fulton County, Georgia.

§ 1007.52 Adjusted Class I differentials.

See § 1000.52.

§ 1007.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1007.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1007.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk,

the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3) (i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1007.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1007.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1007.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1007.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1007.61.

Payments for Milk

§ 1007.70 Producer-settlement fund.

See § 1000.70.

§ 1007.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1007.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1007.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(e).

§ 1007.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1007.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(b) exceeds the amount computed pursuant to § 1007.71(a). If, at such time, the balance

in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1007.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

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

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1007.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

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

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

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

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

(7) The net amount of payment to the producer or cooperative association.

§ 1007.74 [Reserved]

§ 1007.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1007.50 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1007.73 and 1000.76.

§ 1007.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1007.77 Adjustment of accounts.

See § 1000.77.

§ 1007.78 Charges on overdue accounts.

See § 1000.78.

Marketwide Service Payments

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1000.44 by $0.07 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1005, and allocated to Class I milk pursuant to § 1000.44(a)(9); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing area of Federal Order 1005.

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the applicable Class I differential in § 1000.52 for the county in which the shipping plant is located from the Class I differential applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1007.85 Assessment for order administration.

See § 1000.85.

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See § 1000.86.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

Subpart—Order Regulating Handling

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Administrative Assessment and Marketing Service Deduction

1030.85 Assessment for order administration.
1030.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1030.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1030, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1030.2 Upper Midwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Illinois Counties

Boone, Carroll, Cook, De Kalb, Du Page, Jo Daviess, Kane, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago.

Iowa Counties

Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Michigan Counties

Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Minnesota

All counties except Lincoln, Nobles, Pipestone, and Rock.

North Dakota Counties

Barnes, Cass, Cavalier, Dickey, Grand Forks, Griggs, La Moure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Traill, and Walsh.

South Dakota Counties

Brown, Day, Edmunds, Grant, Marshall, McPherson, Roberts, and Walworth.

Wisconsin Counties

All counties except Crawford and Grant.

§ 1030.3 Route disposition.

See § 1000.3.

§ 1030.4 Plant.

See § 1000.4.

§ 1030.5 Distributing plant.

See § 1000.5.

§ 1030.6 Supply plant.

See § 1000.6.

§ 1030.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 15 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 15 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 10 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1000.9(c), including milk diverted pursuant to § 1030.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (c)(1)(i) through (iv) of this section, except that whenever shipping requirements are increased pursuant to paragraph (g) of this section, only shipments to pool plants described in paragraphs (a), (b), and (e) of this section shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1030.7(a), (b) and (e);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to §§ 1000.9(c) or 1030.13(c) to plants described in paragraphs (a), (b), and (e) of this section.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(d) [Reserved]

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of 2 or more supply plants operated by one or more handlers may qualify for pooling by meeting the shipping requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area or was a pool supply plant pursuant to § 1030.7(c) for each of the 3 months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a system for the period of August through July of the following year. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through July. The handler(s) that established a system may add a plant operated by such handler(s) to a system if such plant has been a pool plant each of the 6 prior months and would otherwise be eligible to be in a system, upon written request to the market administrator no later than the 15th day of the prior month. In the event of an ownership change or the business failure of a handler that is a participant in a system, the system may be reorganized to reflect such changes if a written request to file a new marketing agreement is submitted to the market administrator; and

(3) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section and the diversion limits described in § 1030.13(d)(2) may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's

own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping or diversion percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1030.8 Nonpool plant.

See § 1000.8.

§ 1030.9 Handler.

See § 1000.9.

§ 1030.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing during the month;

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1030.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1030.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1030.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion unless at least one day's production of the dairy farmer has been physically received as

producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk diverted by a handler described in § 1000.9(c) may not exceed 90 percent of the producer milk receipts reported by the handler pursuant to § 1030.30(c) provided that not less than 10 percent of such receipts are delivered to plants described in § 1030.7(c)(1)(i) through (iii). These percentages are subject to any adjustments that may be made pursuant to § 1030.7(g); and

(3) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1030.14 Other source milk.

See § 1000.14.

§ 1030.15 Fluid milk product.

See § 1000.15.

§ 1030.16 Fluid cream product.

See § 1000.16.

§ 1030.17 [Reserved]

§ 1030.18 Cooperative association.

See § 1000.18.

§ 1030.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1030.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

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

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

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

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

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

§ 1030.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1030.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1030.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1030.32 Other reports.

In addition to the reports required pursuant to §§ 1030.30 and 1030.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1030.40 Classes of utilization.

See § 1000.40.

§ 1030.41 [Reserved]

§ 1030.42 Classification of transfers and diversions.

See § 1000.42.

§ 1030.43 General classification rules.

See § 1000.43.

§ 1030.44 Classification of producer milk.

See § 1000.44.

§ 1030.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1030.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1030.51 Class I differential and price.

The Class I differential shall be the differential established for Cook County, Illinois, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cook County, Illinois.

§ 1030.52 Adjusted Class I differentials.

See § 1000.52.

§ 1030.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1030.54 Equivalent price.

See § 1000.54.

§ 1030.55 Transportation credits and assembly credits.

(a) Each handler operating a pool distributing plant described in § 1030.7(a), (b), or (e) that receives bulk milk from another pool plant shall receive a transportation credit for such milk computed as follows:

(1) Determine the hundredweight of milk eligible for the credit by completing the steps in paragraph (c) of this section;

(2) Multiply the hundredweight of milk eligible for the credit by .28 cents times the number of miles between the transferor plant and the transferee plant;

(3) Subtract the effective Class I price at the transferor plant from the effective Class I price at the transferee plant;

(4) Multiply any positive amount resulting from the subtraction in paragraph (a)(3) of this section by the hundredweight of milk eligible for the credit; and

(5) Subtract the amount computed in paragraph (a)(4) of this section from the

amount computed in paragraph (a)(2) of this section. If the amount computed in paragraph (a)(4) of this section exceeds the amount computed in paragraph (a)(2) of this section, the transportation credit shall be zero.

(b) Each handler operating a pool distributing plant described in § 1030.7(a), (b), or (e) that receives milk from dairy farmers, each handler that transfers or diverts bulk milk from a pool plant to a pool distributing plant, and each handler described in § 1000.9(c) that delivers producer milk to a pool distributing plant shall receive an assembly credit on the portion of such milk eligible for the credit pursuant to paragraph (c) of this section. The credit shall be computed by multiplying the hundredweight of milk eligible for the credit by 8 cents.

(c) The following procedure shall be used to determine the amount of milk eligible for transportation and assembly credits pursuant to paragraphs (a) and (b) of this section:

(1) At each pool distributing plant, determine the aggregate quantity of Class I milk, excluding beginning inventory of packaged fluid milk products;

(2) Subtract the quantity of packaged fluid milk products received at the pool distributing plant from other pool plants and from nonpool plants if such receipts are assigned to Class I;

(3) Subtract the quantity of bulk milk shipped from the pool distributing plant to other plants to the extent that such milk is classified as Class I milk;

(4) Subtract the quantity of bulk milk received at the pool distributing plant from other order plants and unregulated supply plants that is assigned to Class I pursuant to §§ 1000.43(d) and 1000.44; and

(5) Assign the remaining quantity pro rata to physical receipts during the month from:

(i) Producers;

(ii) Handlers described in § 1000.9(c); and

(iii) Other pool plants.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the values computed in paragraphs (j) and (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1030.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month and by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of

nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

(k) Compute the amount of credits applicable pursuant to § 1030.55.

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

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

§ 1030.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

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

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

Payments for Milk

§ 1030.70 Producer-settlement fund.

See § 1000.70.

§ 1030.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1030.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

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

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

§ 1030.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.71(b) exceeds the amount computed pursuant to § 1030.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1030.73 Payments to producers and to cooperative associations.

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

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

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

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

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

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

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

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

(vii) Less proper deductions authorized in writing by such producer, and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to

paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (c)(2)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

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

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

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

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

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

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1030.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

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

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

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

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

(8) The net amount of payment to the producer or cooperative association.

§ 1030.74 [Reserved]

§ 1030.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1030.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1030.73 and 1000.76.

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

See § 1000.76.

§ 1030.77 Adjustment of accounts.

See § 1000.77.

§ 1030.78 Charges on overdue accounts.

See § 1000.78.

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See § 1000.85.

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See § 1000.86.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601—674.

Subpart—Order Regulating Handling

General Provisions

§ 1032.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1032, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1032.2 Central marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Colorado Counties

Adams, Arapahoe, Baca, Bent, Boulder, Chaffee, Clear Creek, Cheyenne, Crowley, Custer, Delta, Denver, Douglas, Eagle, El Paso, Elbert, Freemont, Garfield, Gilpin, Gunnison, Huerfano, Jefferson, Kiowa, Kit Carson, Lake, Larimer, Las Animas, Lincoln, Logan, Mesa, Montrose, Morgan, Otero, Park, Phillips, Pitkin, Prowers, Pueblo, Sedgwick, Summit, Teller, Washington, Weld, and Yuma.

Illinois Counties

Adams, Alexander, Bond, Brown, Bureau, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kankakee, Knox, La Salle, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, Saline, Sangamon, Schuyler, Scott, Shelby, St. Clair, Stark, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson, and Woodford.

Iowa Counties

All Iowa counties except Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Kansas

All of the State of Kansas.

Minnesota Counties

Lincoln, Nobles, Pipestone, and Rock.

Missouri Counties and Cities

The counties of Andrew, Atchison, Bates, Buchanan, Caldwell, Carroll, Cass, Clay, Clinton, Daviess, De Kalb, Franklin, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Livingston, Mercer, Nodaway, Pettis, Platte, Putnam, Ray, Saline, Schuyler, St. Charles, St. Clair, Ste. Genevieve, St. Louis, Sullivan, Warren, and Worth; and the city of St. Louis.

Nebraska Counties

Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Chase, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Knox, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, and York.

Oklahoma

All of the State of Oklahoma.

South Dakota Counties

Aurora, Beadle, Bon Homme, Brookings, Clark, Clay, Codington, Davison, Deuel, Douglas, Hamlin, Hanson, Hutchinson, Jerauld, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Spink, Turner, Union, and Yankton.

Wisconsin Counties

Crawford and Grant.

§ 1032.3 Route disposition.

See § 1000.3.

§ 1032.4 Plant.

See § 1000.4.

§ 1032.5 Distributing plant.

See § 1000.5.

§ 1032.6 Supply plant.

See § 1000.6.

§ 1032.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c), (d), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received

at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section during each of the months of September through November and January is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1032.12(b)) and handlers described in § 1000.9(c), including milk diverted by the plant operator, and 25 percent for all other months, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of August through April shall continue to so qualify in each of the following months of May through July, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1032.13(c);

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage;

(4) The operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under any other Federal order, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to distributing plants qualified as pool plants pursuant to paragraphs (a) or (b) of this section; and

(5) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A plant located in the marketing area and operated by a cooperative association if, during the month or the immediately preceding 12-month period, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant, subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before September 1 requesting that such plants qualify as a system for the period of September through August of the following year. Such request will contain a list of the plants participating in the system;

(3) Each plant included within a pool supply plant system shall continue each month as a plant in the system through the following August unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through August. No plant may be added in any subsequent month through the following August to a system that qualifies in September; and

(4) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentages of paragraphs (c), (d), and (f) of this section may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be

appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the market administrator is to be effective, the market administrator may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1032.8 Nonpool plant.

See § 1000.8.

§ 1032.9 Handler.

See § 1000.9.

§ 1032.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1032.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1032.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1032.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until at least one day's production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 65 percent during the months of September through November and January, and not more than 75 percent during the months of February through April and December;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of

this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1032.14 Other source milk.

See § 1000.14.

§ 1032.15 Fluid milk product.

See § 1000.15.

§ 1032.16 Fluid cream product.

See § 1000.16.

§ 1032.17 [Reserved]

§ 1032.18 Cooperative association.

See § 1000.18.

§ 1032.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1032.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1032.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

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

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

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

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

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

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1032.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1032.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1032.40 Classes of utilization.

See § 1000.40.

§ 1032.41 [Reserved]

§ 1032.42 Classification of transfers and diversions.

See § 1000.42.

§ 1032.43 General classification rules.

See § 1000.43.

§ 1032.44 Classification of producer milk.

See § 1000.44.

§ 1032.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1032.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1032.51 Class I differential and price.

The Class I differential shall be the differential established for Jackson County, Missouri, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Jackson County, Missouri.

§ 1032.52 Adjusted Class I differentials.

See § 1000.52.

§ 1032.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1032.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1032.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c)

with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1032.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

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

§ 1032.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

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

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

Payments for Milk

§ 1032.70 Producer-settlement fund.

See § 1000.70.

§ 1032.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1032.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1032.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

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

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

§ 1032.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1032.71(b) exceeds the amount computed pursuant to § 1032.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1032.73 Payments to producers and to cooperative associations.

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

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1032.75;

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

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

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

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

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

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

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44 as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (c)(2)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1032.75;

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

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

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

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

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1032.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

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

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

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

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

(8) The net amount of payment to the producer or cooperative association.

§ 1032.74 [Reserved]

§ 1032.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1032.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1032.73 and 1000.76.

§ 1032.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1032.77 Adjustment of accounts.

See § 1000.77.

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See § 1000.78.

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PART 1033—MILK IN THE MIDEAST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1033.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1033, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1033.2 Mideast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Ohio

The townships of Woodville and Madison in Sandusky County and all other counties in Ohio except Erie, Huron, and Ottawa.

Indiana Counties

Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clay, Clinton, Dearborn, Decatur, De Kalb, Delaware, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, La Porte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Owen, Parke, Porter, Pulaski, Putnam, Randolph, Ripley, Rush, Shelby, St. Joseph, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Wabash, Warren, Wayne, Wells, White, and Whitley.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

Michigan Counties

All counties except Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Pennsylvania Counties

Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington.

In Clarion County only the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

All of Westmoreland County except the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair, and the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward.

West Virginia Counties

Barbour, Boone, Brooke, Cabell, Calhoun, Doddridge, Fayette, Gilmer, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, Mingo, Monongalia, Ohio, Pleasants, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Wayne, Wetzel, Wirt, Wood, and Wyoming.

§ 1033.3 Route disposition.

See § 1000.3.

§ 1033.4 Plant.

See § 1000.4.

§ 1033.5 Distributing plant.

See § 1000.5.

§ 1033.6 Supply plant.

See § 1000.6.

§ 1033.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) through (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 30 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 30 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1033.9(c), as reported in § 1033.30(a), is not less than 30 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

(1) Qualifying shipments pursuant to this paragraph may be made to the following plants, except whenever the authority provided in paragraph (g) of this section is applied to increase the shipping requirements specified in this section, only shipments to pool plants described in § 1033.7(a) and (b), shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1033.7(a) and (b);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for transfers to such plants shall be limited to the quantity shipped to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(4) A supply plant that meets the shipping requirements of this paragraph during each of the immediately preceding months of September through February shall be a pool plant during the following months of March through August unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (g) of this section, or the plant operator requests nonpool status for the plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s). The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (c) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (d), (e) or (f) of this section, such plant must first have met the percentage shipping requirements of paragraph (c) of this section for 6 consecutive months.

(5) A supply plant that does not meet the minimum delivery requirements specified in this paragraph to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) or (b) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the 3 immediately preceding months.

(d) A plant operated by a cooperative association if, during the month, 30 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 30-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted regulatory authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

(e) A plant located inside the marketing area which has been a pool plant under this order or its predecessor orders for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than 35 percent; and

(2) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (c)(1) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(f) A system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area, or was a pool supply plant for each of the 3 months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1033.9(c) to qualify plants located outside the marketing area;

(2) A written notification to the market administrator listing the plants to be included in the system and the handler that is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by the designated handler and any others included in the system, and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 5th working day following the month to which the notice applies. The listed plants included in the system shall also be in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(3) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system unless the plant subsequently fails to qualify for pooling, or the responsible handler submits a written notification to the market administrator prior to the first day of the month that the plant is to be deleted from the system, or that the system is to be discontinued. In any month of March through August, a system shall not contain any plant which was not qualified under this paragraph, either individually or as a member of a system, during the previous September through February.

(g) The applicable shipping percentages of paragraphs (c) through (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section that also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to

paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1033.8 Nonpool plant.

See § 1000.8.

§ 1033.9 Handler.

See § 1000.9.

§ 1033.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1033.11 [Reserved]

§ 1033.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1033.13; or

(2) Received by a handler described in § 1033.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1033.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1033.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a cooperative association described in § 1033.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least one day's production is caused by the handler to be physically received at a pool plant in each of the months of September through November;

(3) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c)), the handler diverted to nonpool plants not more than 60 percent during the months of September through February;

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits set forth in paragraph (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1033.14 Other source milk.

See § 1000.14.

§ 1033.15 Fluid milk products.

See § 1000.15.

§ 1033.16 Fluid cream product.

See § 1000.16.

§ 1033.17 [Reserved]

§ 1033.18 Cooperative association.

See § 1000.18.

§ 1033.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1033.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1033.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

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

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

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

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

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

§ 1033.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1033.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1033.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1033.32 Other reports.

In addition to the reports required pursuant to §§ 1033.30 and 1033.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1033.40 Classes of utilization.

See § 1000.40.

§ 1033.41 [Reserved]

§ 1033.42 Classification of transfers and diversions.

See § 1000.42.

§ 1033.43 General classification rules.

See § 1000.43.

§ 1033.44 Classification of producer milk.

See § 1000.44.

§ 1033.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1033.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1033.51 Class I differential and price.

The Class I differential shall be the differential established for Cuyahoga County, Ohio which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cuyahoga County, Ohio.

§ 1033.52 Adjusted Class I differentials.

See § 1000.52.

§ 1033.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1033.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1033.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

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

§ 1033.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

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

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

Payments for Milk

§ 1033.70 Producer-settlement fund.

See § 1000.70.

§ 1033.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1033.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1033.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

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

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

§ 1033.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1033.71(b) exceeds the amount computed pursuant to § 1033.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly

such payments and shall complete the payments as soon as the funds are available.

§ 1033.73 Payments to producers and to cooperative associations.

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

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1033.75;

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

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

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

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

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

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

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative associations.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk fluid milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the partial payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section; and

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1033.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

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

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

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

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

(8) The net amount of payment to the producer or cooperative association.

§ 1033.74 [Reserved]

§ 1033.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1033.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1033.73 and 1000.76.

§ 1033.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1033.77 Adjustment of accounts.

See § 1000.77.

§ 1033.78 Charges on overdue accounts.

See § 1000.78.

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See § 1000.85.

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See § 1000.86.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1124, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1124.2 Pacific Northwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Washington

All of the State of Washington.

Idaho Counties

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Oregon Counties

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

§ 1124.3 Route disposition.

See § 1000.3.

§ 1124.4 Plant.

See § 1000.4.

§ 1124.5 Distributing plant.

See § 1000.5.

§ 1124.6 Supply plant.

See § 1000.6.

§ 1124.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraph (c) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk

from another plant, which milk is classified other than Class I under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (excluding concentrated milk transferred by agreement for other than Class I use) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products processed and packaged at such plant;

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1000.9(c);

(3) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1124.13(d);

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d)—(f) [Reserved]

(g) The applicable shipping percentage of paragraph (c) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order.

§ 1124.8 Nonpool plant.

See § 1000.8.

§ 1124.9 Handler.

See § 1000.9.

§ 1124.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (4) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have his/her producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control and management of the producer-handler and are operated as the producer-handler's own enterprise and at its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute the person's milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are

directly or indirectly, solely or partially, owned, operated, or controlled by the producer-handler, in which the producer-handler in any way has an interest, including any contractual arrangement, or which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely or partially owned by, and directly or indirectly operated or controlled by, the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraphs (a)(1) through (4) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1) and (2) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been canceled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1124.11 Cooperative reserve supply unit.

Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to § 1000.9(c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a plant described in § 1124.7(a). A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section.

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use are needed for plants defined in § 1124.7(a) or (b). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement. Any decision on the required shipment of bulk fluid milk from cooperative reserve supply units must be made in writing at least one day before the effective date.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1000.9(c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1124.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1124.13(e);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm as other than producer milk under this or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1124.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a cooperative reserve supply unit described in § 1124.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received and shall not be subject to the conditions specified in paragraph (e) of this section;

(c) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(d) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(e) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c), excluding a cooperative reserve supply unit described in § 1124.11, to a nonpool plant, subject to the following conditions:

(1) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of September through February, and not more than 99 percent during the months of March through August;

(2) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (e)(1) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5); and

(5) The applicable diversion limits in paragraph (e)(1) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1124.14 Other source milk.

See § 1000.14.

§ 1124.15 Fluid milk product.

See § 1000.15.

§ 1124.16 Fluid cream product.

See § 1000.16.

§ 1124.17 [Reserved]

§ 1124.18 Cooperative association.

See § 1000.18.

§ 1124.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1124.7 shall report for each of its operations the following information:

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

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

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

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

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

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

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

§ 1124.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1124.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§ 1124.30 and 1124.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1124.40 Classes of utilization.

See § 1000.40.

§ 1124.41 [Reserved]

§ 1124.42 Classification of transfers and diversions.

See § 1000.42.

§ 1124.43 General classification rules.

See § 1000.43.

§ 1124.44 Classification of producer milk.

In addition to the provisions provided in § 1000.44, the words '', or acquired for distribution,'' are inserted following the word ''received'' in § 1000.44(a)(3)(iv).

§ 1124.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1124.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1124.51 Class I differential and price.

The Class I differential shall be the differential established for King County, Washington, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for King County, Washington.

§ 1124.52 Adjusted Class I differentials.

See § 1000.52.

§ 1124.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1124.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1124.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding steps of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

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

§ 1124.62 Announcement of producer prices.

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

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

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

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

Payments for Milk

§ 1124.70 Producer-settlement fund.

See § 1000.70.

§ 1124.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1124.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1124.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

§ 1124.72 Payments from the producer-settlement fund.

No later than the 18th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

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

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 18th day of the month, partial payment shall be made so that it is received by each producer on or before the last day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1124.75;

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

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

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

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

(vi) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(vii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the

milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month.

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1124.75;

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

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

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

(v) Add together the amounts computed in paragraphs (c)(3)(i) through (iv) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1124.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

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

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

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

(7) The net amount of payment to the producer or cooperative association.

§ 1124.74 [Reserved]

§ 1124.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1124.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1124.73 and 1000.76.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1124.77 Adjustment of accounts.

See § 1000.77.

§ 1124.78 Charges on overdue accounts.

See § 1000.78.

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See § 1000.86.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1126.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part, 1126, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1126.2 Southwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

New Mexico and Texas

All of the States of New Mexico and Texas.

Colorado Counties

Archuleta, LaPlata, and Montezuma.

§ 1126.3 Route disposition.

See § 1000.3.

§ 1126.4 Plant.

See § 1000.4.

§ 1126.5 Distributing plant.

See § 1000.5.

§ 1126.6 Supply plant.

See § 1000.6.

§ 1126.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in

writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order, and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) or (d) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1126.8 Nonpool plant.

See § 1000.8.

§ 1126.9 Handler.

See § 1000.9.

§ 1126.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of this or another Federal order;

(c) Receives no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order, including such products received at a location other than the producer-handler's processing plant for distribution on routes. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1126.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1126.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and the milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1126.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator for the account of the handler operating such plant to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless a delivery of at least 40,000 pounds or one day's milk production, whichever is less, of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time;

(2) The total quantity of milk diverted during the month by a cooperative association shall not exceed 50 percent of the total quantity of producer milk that the cooperative association caused to be received at pool plants and diverted;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to this paragraph. The total quantity of milk so diverted during the month shall not exceed 50 percent of the total quantity of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1126.7(e)) and diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery requirement in paragraph (d)(1) and the diversion

percentages in paragraphs (d)(2) and (3) of this section may be increased or decreased by the market administrator if there is a finding that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or any diversion percentage must be issued in writing at least one day before the effective date.

§ 1126.14 Other source milk.

See § 1000.14.

§ 1126.15 Fluid milk product.

See § 1000.15.

§ 1126.16 Fluid cream product.

See § 1000.16.

§ 1126.17 [Reserved]

§ 1126.18 Cooperative association.

See § 1000.18.

§ 1126.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1126.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 8th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of nonfat solids other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

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

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

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

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

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

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1126.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1126.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1126.32 Other reports.

In addition to the reports required pursuant to §§ 1126.30 and 1126.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1126.40 Classes of utilization.

See § 1000.40.

§ 1126.41 [Reserved]

§ 1126.42 Classification of transfers and diversions.

See § 1000.42.

§ 1126.43 General classification rules.

See § 1000.43.

§ 1126.44 Classification of producer milk.

See § 1000.44.

§ 1126.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1126.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1126.51 Class I differential and price.

The Class I differential shall be the differential established for Dallas County, Texas, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Dallas County, Texas.

§ 1126.52 Adjusted Class I differentials.

See § 1000.52.

§ 1126.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1126.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1126.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the

skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1126.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

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

§ 1126.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

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

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

Payments for Milk

§ 1126.70 Producer-settlement fund.

See § 1000.70.

§ 1126.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in

§ 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1126.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1126.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

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

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

§ 1126.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(b) exceeds the amount computed pursuant to § 1126.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1126.73 Payments to producers and to cooperative associations.

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

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 18th day after the end of the month (except as provided in § 1000.90) in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1126.75;

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

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

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

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

(vi) Add the amounts computed in paragraphs (a)(2)(i) through (v) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer subject to approval by the market administrator; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) On or before the day prior to the dates specified for partial and final payments pursuant to paragraph (a) of this section (except as provided in § 1000.90), each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payments made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1126.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to cooperative associations pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be

completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

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

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

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

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

(8) The net amount of payment to the producer or cooperative association.

§ 1126.74 [Reserved]

§ 1126.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1126.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1126.73 and 1000.76.

§ 1126.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1126.77 Adjustment of accounts.

See § 1000.77.

§ 1126.78 Charges on overdue accounts.

See § 1000.78.

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§ 1126.85 Assessment for order administration.

See § 1000.85.

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See § 1000.86.

PART 1131—MILK IN ARIZONA-LAS VEGAS MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601—674.

Subpart—Order Regulating Handling

General Provisions

§ 1131.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part, 1131, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1131.2 Arizona-Las Vegas marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Arizona

All of the State of Arizona.

Nevada Counties

Clark.

§ 1131.3 Route disposition.

See § 1000.3.

§ 1131.4 Plant.

See § 1000.4.

§ 1131.5 Distributing plant.

See § 1000.5.

§ 1131.6 Supply plant.

See § 1000.6.

§ 1131.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received at such plant from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area and operated by a cooperative association if, during the month, or the immediately preceding 12-month period ending with the current month, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to all of the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1131.8 Nonpool plant.

See § 1000.8.

§ 1131.9 Handler.

See § 1000.9.

§ 1131.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of this or another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products;

(e) Does not distribute fluid milk products to a wholesale customer who also is serviced by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the operation of the distributing plant are the personal enterprise of, and at the personal risk of, such person in his/her capacity as a producer-handler.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1131.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1131.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk is received at a pool plant if during the month milk from the same farm is received at a nonpool plant (except a nonpool plant that has no utilization of milk products in any class other than Class III or Class IV) other than as producer milk under this or some other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1131.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a handler in any month shall not exceed 50 percent of the total producer milk caused by the handler to be received at pool plants and diverted;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1131.12(b)(5); and

(5) The delivery day requirement in paragraph (d)(1) of this section and diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1131.14 Other source milk.

See § 1000.14.

§ 1131.15 Fluid milk product.

See § 1000.15.

§ 1131.16 Fluid cream product.

See § 1000.16.

§ 1131.17 [Reserved]

§ 1131.18 Cooperative association.

See § 1000.18.

§ 1131.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1131.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and (6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1000.9(c);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and fluid cream products; and (5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

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

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1131.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) The month;

(2) The producer's name and address;

(3) The daily and total pounds of milk received from the producer;

(4) The total butterfat content of such milk; and

(5) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

In addition to the reports required pursuant to § 1131.30 and § 1131.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1131.40 Classes of utilization.

See § 1000.40.

§ 1131.41 [Reserved]

§ 1131.42 Classification of transfers and diversions.

See § 1000.42.

§ 1131.43 General classification rules.

See § 1000.43.

§ 1131.44 Classification of producer milk.

See § 1000.44.

§ 1131.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1131.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1131.51 Class I differential and price.

The Class I differential shall be the differential established for Maricopa County, Arizona, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Maricopa County, Arizona.

§ 1131.52 Adjusted Class I differentials.

See § 1000.52.

§ 1131.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1131.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1131.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding steps of § 1000.44(b) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to

§ 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding steps of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1131.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1131.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1131.60 for all handlers;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1131.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1131.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times .965.

§ 1131.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1131.61.

Payments for Milk

§ 1131.70 Producer-settlement fund.

See § 1000.70.

§ 1131.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 13th day after the end of the month (except as provided in § 1000.90). Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1131.60.

(b) The sum of:

(1) The value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and

(2) The value at the uniform price as adjusted pursuant to § 1131.75 applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(e).

§ 1131.72 Payments from the producer-settlement fund.

No later than the 14th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(b) exceeds the amount computed pursuant to § 1131.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 25th day of the month, payment shall be made so that it is received by the producer on or before the 27th day of each month (except as provided in § 1000.90) for milk received from such producer during the first 15 days of the month at not less than 1.3 times the lowest class price for the preceding month less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1131.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of producer butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1131.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer,

subject to approval by the market administrator; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) Two days prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity except as the operator of a pool plant, the payment shall be an amount not less than 1.3 times the lowest class price for the preceding month multiplied by the hundredweight of milk.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1131.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata his payments pursuant to such paragraphs, but by not more than the amount of such underpayment. Payments to producers shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund. In the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

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

(2) The daily and total pounds and the total pounds of butterfat content of producer milk;

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

(4) The rate used in making payments if the rate is other than the applicable minimum rate;

(5) The amount, rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to the producer or cooperative association.

§ 1131.74 [Reserved]

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1131.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1131.73 and 1000.76.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1131.77 Adjustment of accounts.

See § 1000.77.

§ 1131.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1131.85 Assessment for order administration.

See § 1000.85.

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See § 1000.86.

PART 1135—MILK IN THE WESTERN MARKETING AREA

Subpart—Order Regulating Handling

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1135.85 Assessment for order administration.
1135.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1135.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order. In this part 1135, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1135.2 Western marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Utah

All of the State of Utah.

Idaho Counties

Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley, and Washington.

Nevada Counties

Elko, Lincoln, and White Pine.

Oregon Counties

Baker, Grant, Harney, Malheur, and Union.

Wyoming Counties

Lincoln and Uinta.

§ 1135.3 Route disposition.

See § 1000.3.

§ 1135.4 Plant.

See § 1000.4.

§ 1135.5 Distributing plant.

See § 1000.5.

§ 1135.6 Supply plant.

See § 1000.6.

§ 1135.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during the month the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1135.12(b)) and handlers described in § 1000.9(c) and § 1135.11, including milk diverted by the plant operator, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1135.13(c);

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage; and

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (f) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 35% or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants located in the marketing area and operated by the same handler may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a)

of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must individually qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1135.8 Nonpool plant.

See § 1000.8.

§ 1135.9 Handler.

In addition to the handlers defined in § 1000.9, handler shall include a person meeting the standards set forth in § 1135.11.

§ 1135.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of this or another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and are operated at its own risk.

§ 1135.11 Proprietary bulk tank handler.

Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(a) Such person must operate a plant located in the marketing area at which milk is processed only into Class II, Class III, or Class IV products; and

(b) Prior to operating as a handler pursuant to this paragraph, such person must submit to the marker administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk.

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1135.13; or

(2) Received by a handler described in § 1000.9(c) or § 1135.11.

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1135.13(d);

(3) A dairy farmer whose milk is diverted to a pool plant by a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm (except a nonpool plant that has no utilization of milk products in any Class other than Class III or Class IV) as other than producer milk under this or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1135.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer, a handler described in § 1000.9(c), or a handler described in § 1135.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) or in § 1135.11 in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant, a cooperative association described in § 1000.9(c), or a proprietary bulk tank handler described in § 1135.11, to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until one day's milk production has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 90 percent;

(3) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler, cooperative association, or proprietary bulk tank handler fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler, cooperative association, or proprietary bulk tank handler during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1135.12(b)(5); and

(6) The delivery day requirement in paragraph (d)(1) of this section and the diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1135.14 Other source milk.

See § 1000.14.

§ 1135.15 Fluid milk product.

See § 1000.15.

§ 1135.16 Fluid cream product.

See § 1000.16.

§ 1135.17 [Reserved]

§ 1135.18 Cooperative association.

See § 1000.18.

§ 1135.19 Commercial food processing establishment.

See § 1000.19

Handler Reports

§ 1135.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator receives the report on or before the 7th day after the end of each month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler that operates a pool plant pursuant to § 1135.7 shall report for each of its operations the following information:

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

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c) and § 1135.11; and

(ii) Receipts of milk from handlers described in § 1000.9(c) and § 1135.11;

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

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

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

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

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in §§ 1000.9(c) or 1135.11 shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

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

§ 1135.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler that operates a pool plant pursuant to § 1135.7 and each handler described in § 1000.9(c) and in § 1135.11 shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1135.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1135.40 Classes of utilization.

See § 1000.40.

§ 1135.41 [Reserved]

§ 1135.42 Classification of transfers and diversions.

See § 1000.42.

§ 1135.43 General classification rules.

See § 1000.43.

§ 1135.44 Classification of producer milk.

See § 1000.44.

§ 1135.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1135.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1135.51 Class I differential and price.

The Class I differential shall be the differential established at Salt Lake County, Utah, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Salt Lake County, Utah.

§ 1135.52 Adjusted Class I differentials.

See § 1000.52.

§ 1135.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1135.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1135.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants, and of each handler described in § 1000.9(c) and each handler described in § 1135.11, with respect to milk that was not received at a pool plant, by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such nonfat components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and

butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

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

§ 1135.62 Announcement of producer prices.

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

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) [Reserved]

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

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

Payments for Milk

§ 1135.70 Producer-settlement fund.

See § 1000.70.

§ 1135.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1135.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1135.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) [Reserved]

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1135.60(h) by the producer price differential as adjusted pursuant to § 1135.75 for the location of the plant from which received.

§ 1135.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1135.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* On or before the 25th day of each month (except as provided in § 1000.90) to each producer an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by such producer to be made from payments due pursuant to this paragraph.

(2) *Final Payment.* On or before the 17th day of the following month (except as provided in § 1000.90), not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1135.75;

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

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

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

(v) [Reserved]

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

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(viii) Less deductions made for marketing service pursuant to § 1000.86.

(b) One day prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be an amount not less than 1.2 times the lowest class price for the preceding

month multiplied by the hundredweight of milk.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and (viii) Add together the amounts computed in paragraphs (b)(3) (i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(1) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1135.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association by not more than the amount of such underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer settlement fund, and in the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9 (a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) [Reserved]

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

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

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

(8) The net amount of payment to the producer or cooperative association.

§ 1135.74 [Reserved]

§ 1135.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1135.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1135.73 and 1000.76.

§ 1135.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1135.77 Adjustment of accounts.

See § 1000.77.

§ 1135.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1135.85 Assessment for order administration.

See § 1000.85.

§ 1135.86 Deduction for marketing services.

See § 1000.86.

Note: Appendices A through F are to the Preamble and will not be condified in Title 7 of the Code of Federal Regulations.

Appendix A: Summary of Preliminary Suggested Order Consolidation Report

Ten marketing areas are suggested in the preliminary consolidation report. As a means of determining where interrelationships among the current marketing areas are strongest, data relating to the receipts and distribution of fluid milk products by distributing plants were gathered for all known distributing plants located in the 47 contiguous States, not including the State of California, for the month of October 1995. At this time, California is not included as a suggested order area. The 1996 Farm Bill allows for the inclusion of a California Federal milk order if California producers petition for and approve an order. If a California order were included in the suggested Federal order structure at a later time, it would encompass the entire State and would include no area outside the State of California. Although interest in a Federal order has been expressed by some California producer groups, no definite action has been taken.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation were:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.

6. Features common to existing orders, such as similar multiple component pricing payment plans.

7. Milk utilization in common dairy products.

The requirement to consolidate existing marketing areas does not specify expansion of regulation to previously nonfederally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. However, a number of the current marketing areas enclose unregulated areas. These ''pockets'' are included in the suggested merged marketing areas only if their inclusion does not change the current regulatory status of a plant. In the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will likely meet the pooling standards of a suggested consolidated order. Further expansion of the marketing areas, which would result in regulating additional handlers, is an issue that should be addressed by the industry. Proposals to take such action should be accompanied by supporting data, views, and arguments concerning the need and basis for any such expansion.

The 10 suggested consolidated marketing areas and the major reasons for consolidation are:

1. NORTHEAST—*current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders.* Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. The orders are also surrounded by nonfederally regulated territory. A further measure of association is evident by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

2. APPALACHIAN—*current marketing areas of the Carolina and Tennessee Valley Federal milk orders, and a portion of the Louisville-Lexington-Evansville Federal milk order.* Overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. FLORIDA—*current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.* Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

4. SOUTHEAST—*current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, 15 currently unregulated Kentucky counties, and 2 currently unregulated northeast Texas counties.* Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and the Kentucky and Texas counties suggested for inclusion. There is minimal sales area overlap with handlers regulated under other Federal orders.

5. MIDEAST—*current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus most of the current marketing area of the Louisville-Lexington-Evansville Federal milk order, Zone 2 of the Michigan Upper Peninsula Federal milk order, and 12 counties of the Southern Illinois-Eastern Missouri Federal milk order.* Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

6. UPPER MIDWEST—*current marketing areas of the Chicago Regional and Upper Midwest Federal milk orders, plus Zones I and I(a) of the Michigan Upper Peninsula Federal milk order and seven unregulated or partly unregulated Wisconsin counties.* Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders, overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order, natural boundary limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs.

7. CENTRAL—*current marketing areas of the Southern Illinois-Eastern Missouri (less 12 counties included in the suggested Mideast marketing area), Central Illinois, Greater Kansas City, Nebraska-Western Iowa (less 11 currently-regulated counties suggested to be unregulated), Eastern South Dakota, Iowa, Southwest Plains, and Eastern Colorado Federal milk orders, plus 63 currently-unregulated counties in seven of the states.* Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

8. SOUTHWEST—*current marketing areas of the Texas, New Mexico-West Texas, and Central Arizona Federal milk orders.* Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for all three orders. In addition, there is some route disposition by Central Arizona handlers into the New Mexico-West Texas marketing area, and the Central Arizona market contains a small number of handlers.

9. WESTERN—*current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders.* Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

10. PACIFIC NORTHWEST—*current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon.* The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets:

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 data]

Consolidated order	Total producer milk (1,000 lbs.)	Number of fully regulated distributing plants	Combined class I utilization (percent)
Northeast	1,934,833	85	46.7
Appalachian	320,198	25	82.5
Florida	200,397	18	88.3
Southeast	443,921	38	84.3

CONSOLIDATED MARKET SUMMARY—Continued

[Based on October 1995 data]

Consolidated order	Total producer milk (1,000 lbs.)	Number of fully regulated distributing plants	Combined class I utilization (percent)
Mideast	[1]1,140,952	68	57.8
Upper Midwest	[2]1,046,539	27	[4]34.2
Central	932,929	42	50.6
Southwest	861,307	31	48.3
Western	304,793	14	[5]31.7
Pacific Northwest	501,257	23	36.3
Total	7,687,126	371	n/a

[1] Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the suggested Mideast market is included in the Central consolidated market.

[2] Producer milk for F.O. 30 and F.O. 68 only.

[3] Producer milk for a F.O. 32 handler that would be in the Mideast consolidated market is included.

[4] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.

[5] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

Appendix B: Summary of Pricing Options

Several options for modifying Class I pricing under the Federal milk market order program, representing a spectrum of views, are discussed in this summary report. The accompanying technical report summarizes all of the comments and proposals received by the Department related to Class I pricing under Federal orders.

Most Class I pricing concepts that were suggested would continue to employ a market-driven basic formula price (BFP) with an added differential. Differentials are a composite of one or more of the following elements: (1) A fixed component, (2) a location adjustment, (3) an adjustor relating to utilization, or (4) the cost of balancing the market. Based on the pricing concepts received, the following options were developed:

Option 1A: Location-Specific Differential—$1.60 per hundredweight fixed differential for three surplus regions (Upper Midwest, West, and Southwest) within a nine-zone national price surface, plus for the other six zones an added component that reflects regional differences in the value of fluid and manufacturing milk.

Option 1B: Modified Location-Specific Differential Option—$1.00 per hundredweight fixed differential plus an added component that reflects the cost of moving bulk milk to deficit markets.

Option 2: Relative Use Differential—$1.60 per hundredweight fixed differential plus a formula-based differential driven by the ratio of Class I milk to all other uses of milk.

Option 3A: Flat Differential Option—$1.60 per hundredweight flat differential, uniformly applied across all orders to generate an identical minimum Class I price.

Option 3B: Flat Differential Modified by Class I Use—$2.00 per hundredweight differential in markets where Class I utilization is less than 70 percent on an annual basis and a differential equal to $2.00 + $0.075(Class I use %—70%) in markets where the Class I utilization is equal to or exceeds 70 percent.

Option 4: Demand-Based Differential—$1.00 per hundredweight fixed differential plus a transportation credit based on location of reserve milk supplies.

Estimated Class I differentials are presented for each option to provide a preliminary basis for determining impacts that may occur. The report provides estimated differentials for the suggested 10 consolidated orders and for the current 32 Federal milk marketing orders.

The report concludes by soliciting comments on the options presented and poses a series of questions for the public to address when submitting comments back to the Department on the issue of Class I pricing.

Appendix C: Summary of Classification Report

The Agricultural Marketing Agreement Act of 1937 provides that all milk should be classified ''in accordance with the form in which or the purpose for which it is used.'' This has resulted in a system of uniform classification provisions that places milk used for fluid purposes in the highest use class, Class I, and other manufactured products in lower classes, Classes II, III, and III–A.

Currently products packaged for fluid consumption such as whole milk, skim milk, buttermilk, and flavored milk drinks are classified as Class I products. Class II products include ice cream, yogurt, cottage cheese, and cream. Class III and Class III–A products include cheese, butter, and nonfat dry milk.

Among the changes in classification recommended in the technical report are the following:

- Eggnog would be reclassified from Class II to Class I.
- Any fluid beverage having less than 6.5 percent nonfat milk solids would be reclassified from Class II to Class I.
- Cream cheese would be reclassified from Class III to Class II.

The technical report recommends changing the classification of milk used in nonfat dry milk from Class III–A to Class III. The report recommends that if Class III–A pricing is not eliminated, the following four alternatives be considered:

- Place a floor beneath the Class III–A price;
- Restrict III–A pricing to certain months or to certain markets;
- Provide an up-charge for nonfat dry milk used in higher-valued products; or
- Provide for a combination of these options.

Maintaining the classification of milk used to make nonfat dry milk in Class III–A is also an option, although not discussed in the technical report.

The technical report addresses Class III–A pricing because of industry concerns about the substitution of nonfat dry milk for fluid milk in Class II and III uses when the Class III–A price is substantially below the Class III price.

Appendix D: Summary of Identical Provisions Report

Federal milk marketing orders contain numerous provisions that establish the regulations for the operation of the orders. Over the years, the orders have been individualized to account for specific situations associated with a given marketing area. However, there are several provisions within the orders that are similar or that could be similar and still provide for efficient and orderly marketing of milk.

The technical report does the following:

- Suggests a model for establishing the consolidated orders and provides suggestions on the order language that can be adopted uniformly throughout all orders.
- Reviewed, simplified, modified, and eliminated differences in order provisions that:
- Define various terms used in the orders.
- Establish regulatory standards for plants and handlers.
- Provide for uniform reporting dates of milk receipts and utilization.
- Provide for uniform dates for payment of milk.
- Provide for computation of a uniform price.
- Reduces performance standards to make it easier for producers to associate with a market.

At this time, it is impossible to determine if there would be any financial impact on producers, handlers, or consumers as a result of any of these suggested provision revisions. It is projected that there will be little impact on the overall program because the changes primarily provide for uniformity. There may be minimal impact on selected individual producers, handlers, or consumers, but this cannot be determined until more specific information is developed regarding the orders (i.e., marketing area and pricing). The suggested identical provisions will be applied to each of the suggested consolidated orders and determinations will be based on the marketing conditions of the given region.

One suggested change in the report that may stimulate some debate is the definition of a producer-handler. The technical report suggests applying the most liberal standard to the producer-handler definition to prevent any producer-handler from becoming regulated as a result of milk order reform. Producer-handlers have been exempt from full regulation because they assume the full risks associated with being a producer and a distributor of milk produced with only occasional and small volumes of milk being purchased from other dairy farmers.

Appendix E: Summary of Basic Formula Price Report

The basic formula price (BFP) is used to determine Federal order prices for milk used in manufactured products and, with the addition of differentials, to determine minimum Class I and II prices for milk pooled under the Federal orders. The current BFP is based on a survey of prices paid for manufacturing grade (Grade B) milk by plants in Minnesota and Wisconsin, updated by month-to-month changes in commodity prices (especially cheese). The continuing decline in the volume of Grade B milk produced in the upper Midwest and nationally is an indication that, in the near future, the M–W price series may not be statistically reliable as an indicator of the value of milk used in manufactured products.

The BFP Committee has received input provided during a public BFP Forum held in Madison, Wisconsin, and from over 200 written public comments, and conducted a survey of transaction prices for manufactured dairy products. The Committee also has sponsored analysis by a group of university researchers, and conducted extensive study and analysis of its own. The BFP Committee evaluated alternatives to the BFP against the criteria of stability, predictability, simplicity, uniformity, transparency, sound economics and reduced regulation. Options identified by the Committee were grouped into the following categories:

Options Considered: Economic formulas
Product price and component formulas
Futures markets
California pricing
Cost of production
Informal rulemaking
Competitive pay price
Pooling differentials only

At this time, the Committee has identified four options for further discussion and debate:

- A four-class, multiple component pricing plan to price butterfat, protein and lactose used in cheese (Class III), and butterfat and nonfat solids used in butter/powder (Class IV).
- A three-class, multiple component pricing plan to price protein used in cheese, butterfat used in butter, and other nonfat solids used in powder (Class III—one manufacturing class).
- A product price formula computed from the butter, powder and cheese shares of U.S. production, using seasonal product yields and a California cost-based make allowance; and
- A competitive pay price series using a national weighted average price paid for Grade A milk used in manufactured products, updated by a product price formula. The price series would contain an adjuster to attempt to remove the effect of current regulation and to reduce it to a level more comparable to the current BFP.

As a basis for Class I prices, the BFP could be made more stable by using an economic formula or using a moving average of a manufacturing price. Class II prices could be based on components or continue to include a differential from the manufacturing price level.

The BFP Committee is continuing to study and analyze alternatives in response to public comments.

Appendix F: Summary of Revised Preliminary Suggested Order Consolidation Report

The ten marketing areas suggested in the initial preliminary consolidation report have increased to eleven and been modified to some extent in this revised preliminary report. Several of the initially suggested marketing areas were the subjects of numerous comments containing information that indicated that the boundaries of those areas should be re-evaluated. In addition, shifts in regulation and distributing plant distribution areas were known to have occurred. As a result, more detailed and updated (January 1997) data was obtained relating to the receipts of producer milk and distribution of fluid milk products by distributing plants in a number of the initially-suggested order marketing areas. As a result, changes were made in the suggested marketing areas of the Northeast, Appalachian, Southeast, Mideast, Upper Midwest, Central, Southwest, and Western regions, and a new Arizona-Las Vegas area was added.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation continued to be:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.
6. Features common to existing orders, such as similar multiple component pricing plans.
7. Milk utilization in common dairy products.

In the initial preliminary report, it was observed that the Farm Bill requirement to consolidate existing marketing areas does not specify expansion of regulation to previously non-Federally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. This revised preliminary report suggests that some currently non-Federally regulated area be added on the basis of comments supported by data, views and arguments filed by interested persons. Specifically, unregulated areas contiguous to the initial suggested consolidated Northeast and Mideast marketing areas are suggested for inclusion in those suggested order areas. Some handlers currently not subject to full Federal order regulation would become pool plants if the suggested areas are added. Handlers who would be affected will be notified of the possible change in their status, and encouraged to comment.

As in the initial preliminary report, ''pockets'' of unregulated areas enclosed in the current marketing areas are included in the suggested consolidated marketing areas if their inclusion does not change the current regulatory status of a plant. However, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will meet the pooling standards of a suggested consolidated order area. As a result, this report suggests that some unregulated areas contiguous to currently-regulated areas be added to Federal order areas where additional handlers would be affected.

The 11 modified suggested marketing areas (with those modified from the initial preliminary report, and the modifications, marked by *) and the major reasons for consolidation are:

*1. NORTHEAST—current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders, **with the addition of*: contiguous unregulated areas of New Hampshire, Vermont and New York; the western non-Federally regulated portion of Massachusetts, the Western New York State order area, and Pennsylvania Milk Marketing Board Areas 2 and 3 in northeastern Pennsylvania.

Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. In several cases, handlers who would become regulated because their total sales in the combined areas would meet pooling standards are located in areas where they compete with handlers who would not be similarly regulated. Handler equity suggests that these handlers, too, should become regulated. Another important measure of association is evidenced by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

Sixteen additional distributing plants would be pooled as a result of the expansion of the consolidated area. Nine of these plants currently are partially regulated.

*2. APPALACHIAN—current marketing areas of the Carolina and Tennessee Valley Federal milk orders, **with the addition of*: all of the Louisville-Lexington-Evansville Federal order area (except one county—in the suggested Southeast area) and 26 currently-unregulated counties in Indiana and Kentucky.

More detailed and updated data showing overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. FLORIDA—current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

*4. SOUTHEAST—current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, plus 15 currently-unregulated Kentucky counties, **minus* 2 currently-unregulated counties in northeast Texas (in the suggested Southwest area).

Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and this county. There is minimal sales area overlap with handlers regulated under other Federal orders. Collection of additional data showed greater disposition in the two Texas counties from Texas handlers than from Southeast handlers. There are no handlers in these two counties that would be affected.

*5. MIDEAST—current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and currently-unregulated counties in Michigan, Indiana, and Ohio **with the addition of*: Pennsylvania Milk Marketing Board Area 6 (in western/central Pennsylvania) and 2 currently-unregulated counties in New York, and **minus* the Louisville-Lexington-Evansville order area, 12 counties in Illinois, and unregulated counties in Indiana and Kentucky that are being suggested for inclusion in the Appalachian area.

Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

Collection of additional data and recent changes in marketing patterns indicate that the relationship between the Louisville-Lexington-Evansville (L–L–E) area and the order areas initially included in the suggested Appalachian area is closer than relationship between L–L–E and the Mideast area.

Seven distributing plants that would not have been pool plants as a result of the initially-suggested consolidation would become pool plants due to the suggested expansion of the consolidated area into Pennsylvania and New York. The number of pool plants also is affected by a shift of pool plants from one consolidated area to another because of the shift of territory from the initially-suggested Mideast area to the revised suggested Appalachian area.

*6. UPPER MIDWEST—current marketing areas of the Chicago Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin, **with the addition of*: the Iowa, Eastern South Dakota, and most of the Nebraska-Western Iowa Federal order areas, plus currently-unregulated counties in Iowa and Nebraska.

Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders and overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order. More-detailed and updated information revealed more significant overlapping procurement and route disposition areas between the Iowa, Eastern South Dakota and Nebraska-Western orders and Chicago Regional and Upper Midwest orders than had been observed in the initial study. In addition, a common pricing plan for producers, natural boundary limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs exist in these orders. Some of the western Nebraska area is more closely associated with the Eastern Colorado area, however, and is suggested to remain with the Central consolidated area.

Eleven additional handlers that would have been pooled under the consolidated Central order in the initial Preliminary Report would be pooled under a consolidated Upper Midwest order under this revised report.

*7. CENTRAL—current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, and Eastern Colorado Federal milk orders, 10 counties currently in the Nebraska-Western Iowa Federal order area, plus 55 currently-unregulated counties in Kansas, Missouri, Illinois, Nebraska and Colorado, **plus* the 12 counties in the current Southern Illinois-Eastern Missouri area that initially were suggested as part of the consolidated Mideast area, **minus* the Eastern South Dakota, Iowa and most of the Nebraska-Western Iowa Federal order marketing areas.

Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

*8. SOUTHWEST—current marketing areas of Texas and New Mexico-West Texas Federal milk orders, **with the addition of:* two northeast Texas counties previously suggested to be added to the Southeast marketing area, and 47 currently-unregulated counties in southwest Texas, and **minus* the Central Arizona marketing area.

Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for both orders. Addition of the currently-unregulated Texas counties will result in the regulation of no additional handlers, and will reduce handlers' recordkeeping and reporting burden and the market administrator's administrative costs. In the initial consolidation report, the Central Arizona area was found to have a minimal association with the New Mexico-West Texas and Texas order areas. Further analysis showed that it has a much more significant degree of association with the Clark County, Nevada, portion of the current Great Basin order area.

The revised suggested consolidated Southwest area would include 4 fewer fully regulated pool plants as a result of the removal of the Central Arizona area.

*9. ARIZONA-LAS VEGAS—*an eleventh marketing area composed of the current marketing area of the Central Arizona order and the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

The major criterion suggesting consolidation is sales overlap between the sole Las Vegas, Nevada, handler and handlers regulated under the Central Arizona order in both Clark County, Nevada, and unregulated portions of northern Arizona. In addition,

both areas exchange significant volumes of bulk and packaged milk with Southern California.

The suggested Arizona-Las Vegas marketing area would include five fully regulated handlers, with no additional handlers regulated because of the addition of the currently-unregulated northern Arizona area.

*10. WESTERN—current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders, **minus* Clark County, Nevada. Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

Collection of more-detailed data indicates that the strength of earlier relationships between the former Great Basin and Lake Mead orders that justified their 1988 merger have dwindled significantly, with the Las Vegas area now more closely related to southern California and competing most heavily with Central Arizona handlers.

11. PACIFIC NORTHWEST—current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets.

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 Data]

Consolidated order	Number of fully regulated distributing plants		Total producer milk (1000 lbs.)		Combined class I use (percent)		Weighted average utilization value	
	Initial report	Revised report	Initial report	Revised report [1]	Initial report	Revised report	Initial report	Revised report
Northeast	85	92	1,934,833	2,102,620	46.7	49.0	$13.44	$13.49
Appalachian	25	29	320,198	[2] 412,813	82.5	81.5	14.11	13.94
Florida	18	16	[3] 200,397	204,541	88.3	88.3	15.05	15.05
Southeast	38	40	[4] 443,921	442,705	84.3	84.3	14.26	14.25
Mideast	68	68	[5] 1,140,952	1,103,366	57.8	57.2	12.96	12.94
Upper Midwest	27	39	[6] 1,046,539	1,354,209	[7] 34.2	[8] 37.6	12.59	12.62
Central	42	30	[9] 932,929	599,334	50.6	53.5	13.15	13.21
Southwest	31	26	861,307	680,232	48.3	48.1	13.36	13.39
Arizona-Las Vegas	N/A	7	N/A	[10] 181,075	N/A	48.9	N/A	13.26
Western	14	11	304,793	293,714	[11] 31.7	[12] 29.6	12.79	12.78
Pacific Northwest	23	21	501,257	493,207	36.3	35.6	12.45	12.44
Total	371	379	7,687,126	7,867,816	N/A	N/A	N/A	N/A

Consolidated Market Summary Table Footnotes

[1] Initial report producer deliveries, adjusted to include only those handlers who would be fully regulated (i.e. Status = 1) in the revised suggested marketing area, unless otherwise noted. When applicable, producer deliveries for currently non-Federally regulated plants which would be fully regulated in a revised suggested consolidated order are included in the appropriate suggested consolidated order.

[2] Includes producer milk for one currently fully regulated plant which would be exempt (i.e. Status = 3B) in the Appalachian market in the revised preliminary report.

[3] Excludes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.

[4] Includes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.

[5] Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the initially-suggested Mideast market is included in the initially-suggested Central market.

[6] Producer milk for F.O. 30 and F.O. 68 only.

[7] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.

[8] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 19.7% combined Class I utilization.

[9] Includes producer milk for a F.O. 32 handler that would be in the initially-suggested Mideast market.

[10] Excludes producer milk for one currently fully regulated F.O. 139 plant and one currently unregulated plant which would be regulated in the Arizona-Las Vegas market in the revised preliminary report.

[11] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

[12] A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.6% combined Class I utilization.

[FR Doc. 99–6547 Filed 4–1–99; 8:45 am]

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Friday
April 2, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 119, 121, et al.
Aging Airplane Safety; Proposed Rule

Advisory Circulars (AC) 91–MA and (AC) 120–XX; Notice of Availability and Request for Comments; Notices

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183

[Docket No. FAA–1999–5401; Notice No. 99–02]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM) and withdrawal of prior proposed rulemaking.

SUMMARY: The FAA proposes to require all airplanes operated under part 121 of Title 14, Code of Federal Regulations (14 CFR), all U.S.-registered multiengine airplanes operated under 14 CFR part 129, and all multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo records reviews and inspections by the Administrator after their 14th year in service to ensure that the maintenance of these airplanes' age-sensitive parts and components has been adequate and timely. The FAA also proposes to permit certain representatives of the Administrator to conduct these inspections. The proposed rule also would prohibit operation of these airplanes after specified deadlines unless damage-tolerance-based inspections and procedures are included in their maintenance or inspection program.

This proposal represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. It would help ensure the continuing airworthiness of aging airplanes operating in air transportation by applying modern damage-tolerance analysis and inspection techniques to older airplane structures that were certificated before such techniques were available, and through mandatory aging aircraft records reviews and inspections to be performed by the Administrator.

The Aging Airplane Safety NPRM published on October 5, 1993 (58 FR 51944) is withdrawn.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in triplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5401, 400 Seventh St. SW., Room Plaza 401, Washington, DC 20590. Comments also may be submitted electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401, between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Aircraft Maintenance Division (AFS–300), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1999–5401.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), the **Federal Register**'s electronic bulletin board service (telephone: (202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statutory Requirement

In October 1991, Congress enacted Title IV of Public Law 102–143, the ''Aging Aircraft Safety Act of 1991'' (AASA), to address aging aircraft concerns. The AASA was subsequently codified as section 447717 of Title 49, Unites States Code (49 U.S.C.).

Section 44717 of 49 U.S.C. instructs the Administrator to ''prescribe regulations that ensure the continuing airworthiness of aging aircraft.'' That section also requires the Administrator to ''make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation.'' The records reviews and inspections would be those necessary to ''enable the Administrator to decide whether the aircraft is in safe condition and maintained properly for operation in air transportation.'' Section 44717 of 49 U.S.C. specifies that these inspections and reviews must be carried out as part of each aircraft's heavy maintenance check conducted ''after the 14th year in which the aircraft has been in service.'' It also states that the air carrier must ''demonstrate to the Administrator, as part of the inspection, that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety.''

Section 44717 of 49 U.S.C. further states that the rule issued by the Administrator must require an air carrier to make its aircraft, as well as any records about the aircraft that the Administrator may require to carry out the review, available for inspection as necessary to comply with the rule. It also states that the Administrator must establish procedures to be followed for carrying out such an inspection.

Aging Airplane Safety Notice of Proposed Rulemaking, 1993

On October 5, 1993, the FAA published Notice No. 93–14, ''Aging Airplane Safety'' (58 FR 51944). The proposals contained in that notice would have required operator certification of aging airplane maintenance actions and would have established a framework for the Administrator to impose operational limits on certain airplanes. Once an airplane reached those limits, additional maintenance actions would be necessary, such as inspections or parts replacements, for the airplane to continue operating. Operational limits would have been established in a separate rulemaking.

Other specific proposals related to operator certification of aging airplane maintenance actions were included in the notice. Those proposals included: (1) A definition of the terms ''heavy maintenance check'' (HMC) and ''years in service''; (2) a requirement for certificate holders to establish an HMC interval for each airplane they operate; (3) a requirement for certificate holders to make a maintenance record at the start of each airplane's 15th year in service and at all subsequent HMCs to certify that the airplane met all maintenance program requirements; and (4) a requirement for certificate holders to notify the FAA at least 30 days before the start of an airplane's HMC.

A number of commenters objected to certain provisions contained in the notice. Many commenters indicated that current rules already enable the Administrator to determine that an aircraft meets all maintenance program requirements; therefore, they asserted that additional rulemaking was unnecessary. Several commenters opposed the required 30-day notice proposal because the current regulations provide the FAA with sufficient means to determine the date of an aircraft's next required inspection. Several commenters also were concerned that the definition of ''heavy maintenance check'' was too broad.

A number of commenters opposed the concept of an operational limit unless the FAA specified the requirements used to establish and extend those limits. Finally, some commenters suggested that the FAA exclude airplanes already having damage-tolerance-based supplemental inspection programs (SIPs) from the operational limit requirement.

Withdrawal of Notice

After further review, and taking into consideration public comments, the Aging Airplane Safety NPRM, Notice No. 93–14 (58 FR 51944, October 5, 1993) is hereby withdrawn.

General Discussion

Historical Perspective

The continued airworthiness of aircraft structure is significantly affected by age-related fatigue damage. Evidence to date suggests that when all critical structure are included, damage-tolerance-based inspections and procedures provide the best approach to address aircraft fatigue.

An underlying principle of damage tolerance is that the initiation and growth of structural fatigue damage can be anticipated with sufficient precision to allow damage-tolerance-based inspections and procedures to detect damage before it reaches a size that affects an airplane's airworthiness. When damage is discovered, airworthiness is maintained by repairing the airplane before further flight.

Early fatigue requirements, such as ''fail-safe'' regulations, did not provide for timely inspection of an aircraft's critical structure to ensure that damaged or failed components could be dependably identified and then repaired or replaced before a hazardous condition developed. In 1978, the damage-tolerance concept was adopted for transport category airplanes as an amendment to 14 CFR 25.571 by Amendment No. 25–45 (43 FR 46238). That amended rule required damage-tolerance analysis as part of the type design of transport category airplanes for which application was received after October 5, 1978. On May 6, 1981, the FAA published Advisory Circular (AC) 91–56, ''Supplemental Structural Inspection Program for Large Transport Category Airplanes,'' guidance material based on the amended rule for existing designs. Using the guidance provided in AC 91–56, many manufacturers of large transport category airplanes (airplanes of more than 75,000 pounds) developed SIPs for their existing models.

Beginning in 1984, the FAA issued a series of airworthiness directives (ADs) requiring the operators of those airplanes to incorporate the SIPs into their maintenance programs. SIPs provide inspections and procedures that are based on damage-tolerance principles.

On August 6, 1993, the FAA revised the airworthiness standards for small metallic airplanes to incorporate Amendment No. 23–45 (58 FR 42163) into 14 CFR part 23. Those revisions provided an option to use damage-tolerance-based inspections and procedures as a means for achieving continued airworthiness of newly certificated normal, utility, acrobatic, and commuter category airplanes. On February 9, 1996, the FAA revised part 23 by Amendment No. 23–48 (61 FR 5148) to require damage-tolerance-based inspections and procedures on all newly certificated commuter category airplanes.

Other airplanes were not affected by the described rule changes and thus do not have prescribed damage-tolerance-based inspections and procedures. These airplanes fall into four basic categories: (1) Airplanes with non-damage-tolerance-based SIPs, based solely on service history, as prescribed in AC No. 91–60, ''The Continued Airworthiness of Older Airplanes''; (2) airplanes that were certificated with design-life limits on the entire airplane or on major components such as the wing, empennage, or fuselage; (3) airplanes that were designed to ''fail-safe'' criteria to comply with fatigue requirements; and (4) airplanes that were certificated with limited consideration being given to metal fatigue.

This Proposal

This proposed rule responds to the provisions of 49 U.S.C. 44717, which requires the Administrator to ''prescribe regulations that ensure the continuing airworthiness of aging aircraft * * * [and] to make inspections and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation that the Administrator decides may be necessary to enable the Administrator to decide whether the aircraft is in safe condition and maintained properly for operation in air transportation.''

As a result of requirements stipulated in 49 U.S.C. 44717, the FAA proposes to prohibit the operation of certain airplanes in scheduled service unless the Administrator or the Administrator's designee has determined that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely. All airplanes operating under part 121, all U.S.-registered multiengine airplanes operating under part 129, and all multiengine airplanes conducting scheduled operations under part 135 would be affected.

Air carriers would be required to make each airplane and certain records related to the maintenance of age-sensitive components of the airplane available to the Administrator. Also, each affected airplane would be prohibited from operating unless damage-tolerance-based inspections and procedures are included in the

maintenance or inspection program used on each airplane in accordance with a specified schedule. Damage-tolerance-based inspections and procedures would be required on all affected airplanes no later than December 20, 2010.

The airplanes affected by this proposed rule transport a significant proportion of those passengers carried in scheduled passenger service and are the most prevalent airplanes operated in such service.

This notice does not propose requirements for rotorcraft or single-engine airplanes, nor does it propose requirements for on-demand passenger- or cargo-carrying operations under 14 CFR part 135. The scope of this proposal includes the preponderance of aircraft the Congress intended to cover under the AASA. Furthermore, the FAA anticipates that the resource-intensive implementation of the proposed aircraft and records inspection provisions may be difficult to administer initially, but that FAA (and designee) resources, in the future, will have the capacity to oversee additional fleets of aircraft.

Thus, in a future notice, the FAA will propose aging aircraft requirements necessary to cover the operation of all the other aircraft used by air carriers to provide air transportation. For the purpose of developing those proposals, the FAA may consider the information (e.g., documents in public docket) it develops for the rule proposed in this notice. It is possible that those future proposals could be similar to the requirements proposed in this notice; however, because of the differences in the designs, operations, and maintenance of those aircraft, differences between this notice and the future proposals are likely.

Congress also instructed the Administrator to encourage governments of foreign countries and relevant international organizations to develop programs addressing aging aircraft concerns. Most foreign air carriers and foreign persons engaged in common-carriage operations have maintenance program requirements adopted by their governments. The FAA issues the airworthiness certificates for U.S.-registered airplanes. By including part 129 in this proposed rule, foreign air carriers and foreign persons operating U.S.-registered multiengine aircraft within or outside the United States would be required to include damage-tolerance-based inspections and procedures in their maintenance programs and be subject to aging aircraft records reviews and inspections. This action forms a portion of the FAA's response to the AASA by helping to ensure the continued airworthiness of aging U.S.-registered airplanes operated worldwide.

This proposal also would revise current 14 CFR 183.33(a) to expand the authority of the Designated Airworthiness Representative (DAR). The DAR would be authorized to conduct the proposed records reviews and inspections on behalf of the Administrator. When this proposal becomes a final rule, the FAA intends to recommend that the International Civil Aviation Organization (ICAO) and the Joint Aviation Authorities (JAA) consider making similar changes to their recommended practices and requirement.

Inspections

The FAA intends to verify that each operator has records to show that they have accomplished all required maintenance tasks, as well as the damage-tolerance-based inspections and procedures that would be required by this proposal. The FAA would validate that these records are correct for each affected airplane during the records review and inspection required by this proposed rule.

Section 44717 of 49 U.S.C. specifies that the records reviews and inspections be carried out as part of each aircraft's heavy maintenance check after the 14th year in service. For airplanes that have already completed 14 years in service, the proposal would require the first records review and inspection within 3 to 5 years of the effective date of the rule. This proposal would generally require the first records review and inspection to be accomplished no later than 5 years after the 14th year in service.

The FAA realizes that the first inspection required 5 years after the 14th year in service may not be consistent with current operator maintenance schedules. As a result, the records reviews and inspections carried out by the Administrator or the Administrator's designee may significantly affect these maintenance schedules, because the reviews and inspections may not coincide with current maintenance schedules.

In formulating this proposal, the FAA considered options for setting repeat intervals. Among those considered were the heavy maintenance check interval, heavy maintenance visit interval, or the ''letter check'' (e.g., ''C'', ''D'', or ''E'') interval or other equivalent check interval an operator may use. The FAA reviewed variabilities in the parameters used by operators to carry out scheduled maintenance requirements such as flight hours, calendar time, or a combination of both. The FAA also considered the phasing and segmenting of heavy maintenance checks and found that the intervals varied from 1 to 27 years.

In Air Transport Association of America (ATA) memorandum number 96–AE–014, dated March 11, 1996, the Airworthiness Concern Coordination Task Force recommended that ''a 'C' check compliance period (18 months) or 'D' check period (5 years) be adopted for all rules unless it can be shown that a shorter time interval is required for safety reasons.'' A copy of this memorandum has been placed in the docket.

Individual operator maintenance or inspection check intervals have been adjusted over the years based on service experience and the operational environment of the aircraft. The adjustment, for the most part, has been toward increasing the time between subsequent check intervals. Consequently, maintenance check intervals vary among operators. To comply with the AASA, the 5-year repetitive interval after the initial inspection, not withstanding the escalations, best helps accomplish the safety goal of the AASA.

The FAA has determined that the best approach is to specify a fixed repeat interval when the Administrator will carry out records reviews and inspections of the affected airplanes. The FAA has chosen the 5-year repeat interval to meet its obligations, as established in 49 U.S.C. 44717.

To reduce the burden on the operator, the record reviews and inspections could take place at any time before the deadlines specified in the proposal. This allows the inspections to coincide with an airplane's normally scheduled maintenance visit when structural components are accessible for inspection. However, if an operator's maintenance interval exceeds 5 years, the operator will be obligated sooner than the end of the interval to make the airplane available to the Administrator or the Administrator's designee for the records review and inspection required by this proposal. For many smaller airplanes, the maintenance visit intervals are less than 5 years. In those cases, the repetitive intervals of the aging airplane records reviews and inspections would not exceed 5 years.

Conducting the inspections during normally scheduled maintenance visits will allow maximum use of the FAA's resources while minimizing the disruption to the operator. It also ensures that a significant portion of the airplane is accessible to the Administrator or the Administrator's designee and allows, to the extent

possible, a visible determination of compliance with aging aircraft requirements. Although it is the FAA's intent to carry out records reviews and inspections to the extent that the aircraft structure is accessible during the maintenance visit, the FAA may require additional access to determine that the maintenance of the airplane's age-sensitive parts and components has been adequate and timely.

The proposed rule specifies that airplanes already at their 25th year in service must be inspected within 3 years after the effective date of the rule. This earlier compliance time for the older airplanes will ensure that the oldest airplanes are inspected first and will distribute the workload for the initial inspections. The FAA estimates that 1,550 airplanes affected by this proposed rule would exceed 24 years in service by 1998. The estimated number of airplanes that will be 15 years old by 1998 is 2,850. Therefore, the proposed rule provides for approximately 1,500 airplanes to be inspected within the first 3 years following the effective date of the rule, followed by an approximately equal amount to be inspected in the subsequent 2 years.

The proposed rule also would require the operator to notify the FAA 60 days before the aircraft is available for the aging airplane records review and inspection. This would ensure that the Administrator or the Administrator's designee would be able to make the plans necessary to accomplish the aging airplane records review and inspection.

Records Review

For the Administrator to fulfill his or her obligation under 49 U.S.C. 44717, this proposal would require that certain records be made available by the operator. Operators are already required by existing regulations to maintain these records and reports. Although the proposal would require status lists and reports of specific maintenance actions, if needed, the FAA has the authority under exiting regulations to request all supporting documentation for the lists.

This proposal would establish a new requirement for ''total years in service.'' The FAA has determined that this new requirement is essential for the Administrator and the operator to determine the compliance time for the initial and repetitive inspections. To meet this requirement, the operator would retain records validating when the initial certificate of airworthiness was issued for each airplane.

In addition, the FAA is aware that an airframe's flight cycles are not currently being collected by operators of small airplanes under part 135. This proposal would require that the operator make certain records and reports available to the FAA during the proposed aging airplane records review inspection.

Damage-Tolerance-Based Inspections and Procedures

A damage-tolerance-based inspection and procedure refers to ''an inspection program that specifies procedures, thresholds, and repeat intervals that have been developed using damage-tolerance principles.'' Damage-tolerance-based inspections and procedures are developed by a manufacturer or operator based on an engineering evaluation of likely sites where damage could occur, considering expected stress levels, material characteristics, and projected crack growth rates. Damage-tolerance-based inspections and procedures identify inspection sites, specify inspection techniques; define thresholds for the initial inspection; and prescribe repeat inspection intervals. Test data and service experience are used to support the analysis.

The most important information used to develop a damage-tolerance-based inspection and procedure is derived analytically or by test, and the inspections are intended to anticipate locations where fatigue cracking might occur. Therefore, it is inappropriate to change damage-tolerance-based inspections and procedures solely on service experience without a significant engineering evaluation to confirm that there are no areas subject to fatigue cracking other than those revealed by the service experience. The engineering evaluation should include considering the detailed design data of the airplane, which is under the control of the manufacturer. For this reason, all damage-tolerance-based inspections and procedures should be developed under the technical direction of the type certificate holder for that airplane, with support from the operators when appropriate. However, the FAA would consider damage-tolerance-based inspections and procedures submitted by any applicant for approval if they are based on tests and service-supported damage-tolerance evaluations for that airplane model.

The damage-tolerance-based inspections and procedures specified in this proposal can be developed using one of the following methods:

(1) Damage-tolerance-based inspections and procedures that comply with § 25.571, Amendment 25–45 (43 FR 46238), or that comply with a subsequent amendment thereto;

(2) Damage-tolerance-based inspections and procedures that comply with the damage-tolerance provisions for metallic structure listed in 14 CFR 23.573, Amendment 23–45 (58 FR 42163), or that comply with a subsequent amendment thereto;

(3) AC 91–56 ''Supplemental Structural Inspection Program for Large Transport Category Airplanes'' dated May 6, 1981;

(4) Draft AC 91–MA ''Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Supplemental Inspection Programs.'' A notice of availability for this AC is published concurrently with this proposal; or

(5) Any other method that the Administrator finds complies with the principles of damage tolerance.

Although this proposed rule specifies dates by which damage-tolerance-based inspections and procedures would be required, the thresholds for these inspections may occur much later. While the damage-tolerance-based inspections and procedures would need to be developed within the regulatory timeframe proposed, the times when the inspections would be completed would depend on the damage-tolerance assessment.

For newly certificated airplanes, damage-tolerance-based inspections necessary to prevent catastrophic failure must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness required by 23.1529 or 25.1529.

Damage-tolerance-based inspections and procedures for airplanes certificated before the amendments that require damage tolerance as part of airplane type design may be approved through an amended or supplemental type certificate. Such a certificate would identify the damage-tolerance-based inspections and procedures as an airworthiness limitation on the airplane.

Damage-tolerance-based inspections and procedures for certain older airplanes also may be approved by a Letter of Approval issued by the FAA Aircraft Certification Office cognizant of the type certificate. The Letter of Approval would place an operational requirement for the operator's affected airplanes.

For some airplanes, the FAA has approved major structural modifications under a supplemental type certificate (STC). The original airplane manufacturer may not have sufficient technical data pertinent to these modifications to assist the airplane operators in conducting a damage-tolerance assessment of the modification. In these situations, the FAA expects the operator to work with the STC holder and the original airplane

manufacturer to develop damage-tolerance-based inspections and procedures for that modification. In some instances, the operator may not be able to work with the STC holder or manufacturer. These operators may elect to conduct their own damage-tolerance assessments. If an operator elects to develop damage-tolerance-based inspections and procedures in this fashion, competent engineering personnel, as well as inspection findings from the current maintenance or inspection program, should be used in conjunction with the airplane's design data base and model fleet experience. These data should be developed by the original manufacturer, and the STC holder should provide the basis for the damage-tolerance-based inspections and procedures; however, the operator also can develop its own data. FAA-approved major structural repairs should be analyzed in the same manner as modifications accomplished under an STC. Such procedures ensure that damage-tolerance-based inspections and procedures address each airplane affected by this proposal, including any modifications or repairs made to the basic airframe.

The FAA is aware that for some currently operating airplanes it may be difficult to develop damage-tolerance-based inspections and procedures. For example, the manufacturer may have gone out of business; technical data may not be adequate; the technical knowledge base may no longer be readily available; or the development of a damage-tolerance-based inspections and procedures may not be economically viable. If any of these conditions exist and appropriate damage-tolerance-based inspections and procedures cannot be developed those airplanes would not be eligible for operation under part 121, 129, or 135 after the dates specified in the proposal.

Non-damage-tolerance-based SIPs based on AC 91–60 have been mandated by ADs on the following airplanes: Douglas DC–3 and DC–6; Convair 240, 340, 440, 580, and 600 series; Lockheed Electra; and the Fokker F–27. Although inspections and procedures based on AC No. 91–60 address known service difficulties, they do not anticipate the possibility of future fatigue cracks that could be predicted through the use of damage-tolerance principles. Some inspection programs developed in accordance with AC No. 91–60 do not qualify as damage-tolerance-based inspections and procedures because they are either based solely on service experience or they may combine partial damage-tolerance assessments with service experience. For these reasons, the proposed rule would not allow continued use of inspection programs based on AC No. 91–60 alone. Instead, it proposes to require damage-tolerance-based inspections and procedures to supplement or replace existing inspection programs based on AC No. 91–60 no later than December 20, 2010.

Designated Airworthiness Representatives (DAR)

Section 44717 of 49 U.S.C. allows the Administrator to delegate the aging aircraft records reviews and inspections to properly qualified private persons as provided under 49 U.S.C. 44701(a)(2)(B) and (C). The FAA normally delegates similar authority to individuals under 49 U.S.C. 44702(d). Those delegations are contained in part 183. Because of the large number of airplanes (over 3,000) that would have to be inspected in a short period of time (5 years) and an anticipated growth of the aging fleet, the FAA proposes to permit such records reviews and inspections to be accomplished by a DAR authorized under part 183.

This proposal would revise current § 183.33 to permit DARs to conduct the reviews and inspections necessary to determine the continued effectiveness of airworthiness certificates, including the proposed reviews and inspections. The FAA would issue guidelines to its aviation safety inspectors and DARs on how to monitor and conduct records reviews and inspections in compliance with this proposed rule.

Proposed Appendixes

The proposed appendixes list the FAA-established design-life goals of several airplane types that are commonly used in scheduled service to assist in implementing this proposal.

For airplane models listed in the proposed appendix to part 121 and for airplane models initially certificated to carry 10 or more passengers located in the proposed appendix to part 129 and the proposed appendix to part 135, the proposal could effectively delay the implementation date of damage-tolerance-based inspections and procedures for these aircraft from 4 years after the effective date of the rule to the time the aircraft reaches its design-life goal.

However, for airplane models initially certificated to carry nine or fewer passengers listed in the proposed appendixes to part 129 and part 135, the proposal requires damage-tolerance-based inspections and procedures sooner than December 20, 2010.

The airplane models with 10 or more passenger seats listed in the proposed appendixes have been certificated with limits on either the structure or the maintenance program, or they have had subsequent structural analysis and testing. These limits are considered adequate to ensure the safety of these airplanes until they reach the listed design-life goal.

Early small airplane regulations did not consider fatigue until 1956, and then only on pressurized fuselages. With the exception of the Fairchild Model SA227–TT, the passenger airplanes with nine or fewer seats included in the proposed appendixes to part 129 and part 135 were initially certificated in the United States without any consideration being given to wing or empennage fatigue. However, the airworthiness authorities of the United Kingdom and Australia required fatigue evaluation on these airplanes before allowing operation in their countries. The airplane models listed in the proposed appendixes have been used consistently in scheduled commuter service in the United States for the past several years, and many of the highest-time airplanes have accumulated a number of flight hours approaching or exceeding the limits set by the airworthiness authorities of these other countries.

Most airplanes with a capacity for nine or fewer passengers were not listed in the appendixes because these airplanes are not commonly used in U.S. commuter operations and tend to have lower fleet times. Most were designed with sufficiently low stresses to allow them to operate safely without the need for damage-tolerance-based inspections and procedures before December 20, 2010.

However, if at a later date the FAA learns of specific airplanes with nine or fewer passenger seats commonly being used in commuter service with flight hours approaching or exceeding the limits set by the airworthiness authorities of other countries, the FAA will consider future rulemaking to add those models to the proposed appendixes.

A description of the airplanes in the proposed appendixes and their associated design-life goals are listed below. The FAA has reviewed the assessments that resulted in the life limit requirements described below, and has determined that those requirements appropriately, if not conservatively, reflect the times in the aircraft's service lives when significant maintenance must be performed on the critical structures to maintain the level of safety required for air transportation.

Beech 99 (All Models)

The Beech 99 is an unpressurized, 17-seat airplane configured for 15 passenger seats and 2 pilot seats. The Beech 99 initially was certificated in 1968 under part 23, Amendment No. 3, and is listed on type certificate data sheet (TCDS) A14CE. Special conditions were imposed on the Beech 99 to require fatigue validation testing of the wing and carry-through structure. In 1990, Beech Aircraft Company issued Mandatory Service Bulletin No. 2297 to require replacement of the entire outboard wing and the entire wing center section after 46,000 hours. This retirement time is based on full-scale fatigue testing.

Beech 1900 (All Models)

The Beech 1900, 1900C, and 1900D are pressurized, 21-seat airplanes configured for 19 passenger seats and 2 pilot seats. The 1900 and 1900C were initially certificated under Special Federal Aviation Regulation (SFAR) No. 41 in 1983, and the Beech 1900D was initially certificated in the commuter category in 1991. All models are listed on TCDS A24CE. All three models have certified life limits of 45,000 hours for the empennage listed in the Airworthiness Limitations sections of their maintenance manuals.

Beech 300, 300LW, B300, and B300C

The Beech 300, 300LW, B300, and B300C are 15-seat airplanes configured for 13 passenger seats and 2 pilot seats. The Beech 300 and 300LW were initially certificated under SFAR No. 41 in 1988, and the Beech B300 and B300C were initially certificated in the commuter category in 1989. All models are listed on TCDS A24CE. All four models have certified 30,000-hour life limits for the empennage listed in the Airworthiness Limitations sections of their maintenance manuals.

BAe Jetstream Models 3101 and 3201

The BAe Jetstream 3101 and 3201 are pressurized, 21-seat airplanes configured for 19 passenger seats and 2 pilot seats. The Jetstream 3101 was initially certificated under SFAR No. 41 in 1982 and is listed on TCDS A21EU. The Jetstream 3201 was initially certificated in the commuter category in 1988 and is listed on TCDS A56EU. Both airplanes have certified life limits of 30,000 landings for the wing and empennage listed in the Airworthiness Limitations sections of their maintenance manuals. For flights of 1 hour in length, this equates to a 30,000-hour limit.

Cessna 402

The Cessna 402 is a small, unpressurized, 10-seat airplane configured for 8 passenger seats and 2 pilot seats. The Cessna 402 was initially certificated in 1956, the Cessna 402A and 402B in 1969, and the Cessna 402C in 1978. They are listed on TCDS A7CE and were certificated in the United States without fatigue requirements. The 402, 402A, and 402B are subjected to AD No. 79–10–15, which mandates a 400-hour repetitive inspection for fatigue cracks on critical components of the wing structure. The proposed appendixes list a design-life goal of 12,000 hours for these aircraft, based on recent Cessna Aircraft Company calculations. The appendix lists a design-life goal of 7,700 hours for the Cessna 402C, based on fatigue limits set on the wing structure by the Airworthiness Authorities of Australia and the United Kingdom.

De Havilland DHC–6 (all models)

The de Havilland DHC–6 is an unpressurized, 24-seat airplane configured for 22 passenger seats and 2 pilot seats. The DHC–6 was initially certificated in 1966 under Civil Air Regulation (CAR) 3, Amendment No. 8, and in 1969 under SFAR No. 23, and is listed on TCDS A9EA. Transport Canada, designated as the airworthiness authority of the country of design by ICAO for the continued airworthiness of the DHC–6, issued an AD that is mandatory in Canada and imposes service life limits on the airplanes listed in the de Havilland Structural Components Service Life Limits Manual, PSM 1–6–11, Revision 4, dated May 31, 1996. This Canadian AD, issued in September 1996, mandates the retirement of the airplane at 66,000 hours.

Dornier DO–228 (all models)

The Dornier DO–228 is an unpressurized, 21-seat airplane configured for 19 passenger seats and 2 pilot seats. The DO–228–100 and DO–228–200 were initially certificated in 1984, the DO–228–101 and DO–228–201 in 1985, and the DO–228–202 in 1986 under part 23, Amendment No. 23, and SFAR No. 41C. The DO–228–212 was certificated in the commuter category in 1990. All are listed on TCDS A16EU. The Airplane Maintenance Manual for the DO–228–100/–101 and DO–228–200/–201/–202/–212 includes Airworthiness Limitation section 05–05–00, which specifies mandatory airplane replacement times. The DO–228–100 and DO–228–200 have a fatigue life of 42,800 hours; the DO–228–101 and DO–228–201 have a fatigue life of 32,800 hours; and the DO–228–202 has a fatigue life of 29,600 hours. The fatigue life for the DO–228–212 is 26,400 hours for all serial numbers except 155, and serial numbers 191 and higher; and 42,800 hours for serial number 155 and serial numbers 191 and higher.

Embraer EMB–110

The Embraer EMB–110 is a pressurized, 21-seat airplane configured for 19 passenger seats and 2 pilot seats. The EMB–110 was initially certificated under SFAR No. 41A in 1978 and is listed on TCDS A21SO. The EMB–110 was initially certificated with a 30,000-hour life limit on the wing and carry-through structure. This limit is listed in Note 3 of TCDS A21SO.

Fairchild Metro SA227

The Fairchild Metro SA227 series includes the SA227–AT, –TT, –AC, –BC, –PC, –CC, and –DD airplanes. The SA227–AT is a 16-seat airplane configured for 14 passenger seats and 2 pilot seats. It was initially certificated under SFAR No. 41C in 1981. The SA227–TT is an 11-seat airplane configured for 9 passenger seats and 2 pilot seats. It was initially certificated under SFAR No. 41B in 1981. Both models are listed on TCDS A5SW and have 35,000-hour certified life limits on their empennages.

The SA227–AC, –BC, and –PC are pressurized, 22-seat airplanes configured for 20 passenger seats and 2 pilot seats. They were initially certificated under SFAR No. 41C in 1981, 1989, and 1985, respectively. All three models are listed on TCDS A8SW and have a 35,000-hour certified empennage life.

The SA227–CC and –DC are pressurized, 21-seat airplanes configured for 19 passenger seats and 2 pilot seats. They were initially certificated in the commuter category of part 23 in 1990. Both models are listed on TCDS A18SW and have 35,000-hour certified empennage life limits.

Fairchild Metro SA226–TC

The SA226–TC is a pressurized, 22-seat airplane configured for 20 passenger seats and 2 pilot seats. It was initially certificated under part 23, Amendment No. 6, in 1970, and later certificated under SFAR No. 41C in 1982. It is listed on TCDS A8SW and has a 35,000-hour certified empennage life limit.

Pilatus Britten-Norman BN–2A MK III (all models)

The Pilatus Britten-Norman BN–2A MK III Trislander is an unpressurized, 18-seat airplane configured for 16 passenger seats and 2 pilot seats. The BN–2A MK III was initially certificated in 1971 under part 23, Amendment No. 8, and is listed on TCDS A29EU. The wing is limited to 23,900 hours at initial certification, assuming one landing per flight hour. For shorter flights, the wing is limited to 20,480 hours. This notice proposes the more conservative number.

Piper Navajo and PA–31 Series

The Piper Navajo and PA–31 series airplanes are 7- to 11-seat airplanes with seating configurations of 5 to 9 passenger seats and 2 pilot seats. Those airplanes listed in the appendixes are capable of carrying six or more passenger seats and have been used in commuter service in significant numbers for several years. There are pressurized and unpressurized versions and models powered by piston or by turbopropeller engines. The unpressurized versions are listed on TCDS A20SO, and the pressurized versions are listed on TCDS A8EA. The unpressurized versions were certificated in the United States under older regulations that did not require fatigue substantiation, and the pressurized versions have no fatigue certification of the wing structure and no fatigue limits on the pressurized cabin.

The Civil Airworthiness Authorities (CAA) of Australia and the United Kingdom required fatigue substantiation of these airplanes as a condition for their initial certification. The design-life goals listed in the appendixes represent limits certified by the Australian CAA. The limits for unpressurized models are based on the fatigue limits of the wing spar lower cap, and the limits for the pressurized models are based on the pressurized cabin.

Short Brothers SD3–30

The Short Brothers SD3–30 is a 32-seat airplane configured for 30 passenger seats and 2 pilot seats. The SD3–30 was certificated in the United States in 1976 under part 25, Amendment No. 30. The manufacturer has limited the maintenance program to 57,600-flight hours contingent on the successful completion of a mid-life inspection at 28,800 hours, as defined in the airplane maintenance manual.

Short Brothers SD3–60

The Short Brothers SD3–60 is a 41-seat airplane configured for 39 passenger seats and 2 pilot seats. The SD3–30 was certificated in the United States in 1982 under a United Kingdom certification basis that is equivalent to part 25, Amendment No. 34. The manufacturer has limited the maintenance program to 28,800 hours, as defined in the airplane maintenance manual.

Short Brothers SD3–Sherpa

The Short Brothers SD3–Sherpa is a 32-seat airplane configured for 30 passenger seats and 2 pilot seats. The SD3–30 was certificated in the United States in 1990 under a United Kingdom certification basis and to the additional validation requirements of part 25, Amendment No. 35. The manufacturer has limited the maintenance program to 40,000 hours, as defined in the airplane maintenance manual.

Related Activity

Concurrent with this proposal, the FAA is issuing two Notices of Availability of ACs. The first, AC No. 91–MA, ''Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Supplemental Inspection Programs,'' provides an acceptable means, but not the only means, to comply with the proposed damage-tolerance-based inspections and procedures. The second, AC No. 120–XX, ''Aging Airplane Records Reviews and Inspections,'' provides guidance regarding how an operator complies with this proposal.

There are other initiatives being considered by the FAA to address Aging Aircraft issues. The FAA has received a recommendation from the Aviation Rulemaking Advisory Committee (ARAC) on rulemaking in the area of repair assessment of pressurized fuselages. The proposal would require a repair assessment for the pressurized fuselages of Airbus A300; Boeing 707/720, 727, 737, and 747; Douglas DC–8, DC–9/MD–80, and DC–10; British Aerospace BAC 1–11; Fokker F–28; and Lockheed L10–11 airplanes. The recommendation currently is being reviewed within the FAA, and publication of an NPRM is anticipated in the near future.

In addition, the FAA has found that some operators do not have a programmatic approach in place to appropriately address airplane corrosion. A rulemaking effort is being considered that would require development and implementation of a corrosion prevention and control program for all airplanes used in air transportation. The FAA anticipates publication of rulemaking on this subject in 1998.

On December 20, 1995, the FAA issued the final rule, ''Commuter Operations and General Certification and Operations Requirements'' (60 FR 65832), also known as the ''Commuter Rule,'' to address commuter air operations in the United States. That rulemaking requires that all airplanes used in scheduled passenger service capable of carrying 10 or more passengers meet specific performance requirements by December 20, 2010. For some older airplanes, significant modifications would be necessary to meet those new requirements. That rulemaking provided an extended compliance date to give operators time to decide whether to retrofit those airplanes or phase them out of scheduled service. Because development of damage-tolerance-based inspections and procedures may be difficult for some airplanes currently operating in scheduled service, the FAA is proposing December 20, 2010, as a compliance date for this rulemaking.

Section-by-Section Analysis

Section 119.3

This section would be revised to include the definition of ''years in service.''

Section 121.368

Proposed paragraph (a) specifies that the Administrator will conduct the records reviews and inspections as necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

Proposed paragraph (b) would prohibit a certificate holder from operating an airplane after a date specified in the section unless the Administrator has completed the aging aircraft records review and inspection.

Proposed paragraph (b) also would set forth the times by which a certificate holder must ensure its airplanes are inspected. Aging airplanes are divided into three categories for these inspections to ensure that the oldest aircraft are inspected first. For those airplanes that will have exceeded 24 years in service, the first records review and inspection would be required no later than 3 years after the effective date of the proposed rule. For those airplanes exceeding 14 but not 24 years in service at the time the proposed rule becomes effective, the first records review and inspection would be required no later than 5 years after the effective date of the proposed rule. Finally, airplanes that will exceed 14 years in service subsequent to the proposed rule's effective date would be required to

undergo the first records review and inspection no later than 5 years after their 14th year in service. All aging airplane records reviews and inspections specified in this section would need to be repeated at intervals not to exceed 5 years.

Proposed paragraph (c) would permit the Administrator to approve 90-day extensions on the thresholds and repeat intervals of aging aircraft records reviews and inspections to accommodate unforeseen scheduling conflicts.

Proposed paragraph (d) would require a certificate holder to make an affected airplane and certain associated records available for review and inspection.

Proposed paragraph (e) would require a certificate holder to notify the Administrator at least 60 days before the airplane and its associated records would be made available for review and inspection.

Section 121.370a

Proposed paragraph (a) would require certificate holders to ensure that, subject to certain limited exceptions, the maintenance programs for airplanes operating under part 121 include damage-tolerance-based inspections and procedures within 4 years after the effective date of the rule.

Proposed paragraph (b) would permit operators of airplanes listed in appendix M to part 121 to operate these airplanes without non-damage-tolerance-based inspections and procedures in their maintenance programs until reaching a design-life goal specified in the appendix, or 4 years after the effective date of the rule, whichever occurs later. However, no aircraft may operate without damage-tolerance-based inspections and procedures after December 20, 2010.

Proposed paragraph (c) would permit operators of airplanes that have non-damage-tolerance-based inspections and procedures already mandated by ADs to continue to operate those airplanes until December 20, 2010. After that date, the operator must have damage-tolerance-based inspections and procedures as part of their maintenance programs to be eligible to operate those airplanes under part 121.

Part 121, Appendix N

This appendix lists the airplanes and the design-life goals that are referenced in proposed § 121.370a.

Section 129.1

Paragraph (a) would update the reference to section 402 of the repealed and recodified FAA Act of 1958.

Paragraph (b) would clarify that proposed §§ 129.16 and 129.20 also apply to operations of U.S.-registered aircraft operated solely outside the United States.

Section 129.16

This proposed section is similar to proposed § 121.370a.

Proposed paragraph (a) would require foreign air carriers or foreign persons who operate U.S.-registered multiengine airplanes that were initially type certificated with 10 or more passenger seats to include damage-tolerance-based inspections and procedures in their maintenance programs within 4 years of the effective date of the proposed rule.

Proposed paragraph (b) would require foreign air carriers or foreign persons who operate U.S.-registered multiengine airplanes that were initially type certificated with nine or fewer passenger seats to include damage-tolerance-based inspections and procedures in their maintenance programs before December 20, 2010.

Proposed paragraph (c) would permit foreign air carriers or foreign persons to operate U.S.-registered airplanes of the type listed in appendix B to part 129 without damage-tolerance-based inspections and procedures in their maintenance programs until reaching a design-life goal specified in the appendix, or 4 years after the effective date of the proposed rule, whichever occurs later. However, no airplane may be operated without damage-tolerance-based inspections and procedures after December 20, 2010.

Proposed paragraph (d) would permit foreign air carriers or foreign persons to operate U.S.-registered airplanes that have non-damage-tolerance-based inspections and procedures already mandated by ADs to continue to operate those airplanes until December 20, 2010. After that date, the operator must have damage-tolerance-based inspections and procedures as part of their maintenance programs to be eligible to operate those airplanes under part 129.

Section 129.33

This proposed section is similar to proposed § 121.368.

Proposed paragraph (a) specifies that the Administrator will conduct the records reviews and inspections as necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

Proposed paragraph (b) would prohibit a foreign air carrier or foreign person from operating a U.S.-registered airplane after a date specified in the section unless the Administrator has completed the aging aircraft records review and inspection.

Proposed paragraph (b) also would set forth the times by which a foreign air carrier or foreign person must ensure its U.S.-registered multiengine airplanes are inspected. Aging airplanes are divided into three categories for these inspections to ensure that the oldest airplanes are inspected first. For those airplanes that will have exceeded 24 years in service, the first records review and inspection would be required no later than 3 years after the effective date of the proposed rule. For those airplanes exceeding 14 but not 24 years in service at the time the proposed rule becomes effective, the first records review and inspection would be required no later than 5 years after the effective date of the proposed rule. Finally, airplanes that will exceed 14 years in service subsequent to the proposed rule's effective date would be required to undergo the first records review and inspection no later than 5 years after the 14th year in service. All aging airplanes records reviews and inspections specified in this section would need to be repeated at intervals not to exceed 5 years.

Proposed paragraph (c) would permit the Administrator to approve 90-day extensions on the thresholds and repeat intervals of aging airplane records review and inspection to accommodate unforeseen scheduling conflicts.

Proposed paragraph (d) would require a foreign air carrier or foreign person to make an affected airplane and certain associated records available for review and inspection.

Proposed paragraph (e) would require a foreign air carrier or foreign person to notify the Administrator at least 60 days before the airplane and its associated records would be made available for review and inspection.

Part 129, Appendix B

This appendix would list the airplanes and the design-life goals that are referenced in proposed § 129.16.

Section 135.168

This proposed section is similar to proposed §§ 121.370a and 129.16.

Proposed paragraph (a) would require operators of multiengine airplanes operating in scheduled service that were initially type certificated with 10 or more passenger seats to include damage-tolerance-based inspections and procedures in their inspection programs within 4 years of the effective date of the proposed rule.

Proposed paragraph (b) would require operators of multiengine airplanes in

scheduled service that were initially type certificated with nine or fewer passenger seats to include damage-tolerance-based inspections and procedures in their inspection programs before December 20, 2010.

Proposed paragraph (c) would permit operators of airplanes listed in appendix F to part 135 to operate these airplanes in scheduled service without damage-tolerance-based inspections and procedures in their inspection programs until reaching a design-life goal specified in the appendix, or 4 years after the effective date of the proposed rule, whichever occurs later. However, no airplane may be operated without damage-tolerance-based inspections and procedures after December 20, 2010.

Proposed paragraph (d) would permit operators of airplanes that have non-damage-tolerance-based inspections and procedures already mandated by ADs to continue to operate those airplanes until December 20, 2010. After that date, the operator must have damage-tolerance-based inspections and procedures as part of their inspection programs to be eligible to operate those airplanes under part 135.

Section 135.422

The proposed section is similar to proposed §§ 121.368 and 129.20.

Proposed paragraph (a) specifies that the Administrator will conduct the records reviews and inspections as necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

Proposed paragraph (b) would prohibit a certificate holder from operating a multiengine airplane in scheduled operations after a date specified in the section unless the Administrator has completed the aging airplane records reviews and inspections.

Proposed paragraph (b) also would set forth the times by which a certificate holder must ensure its airplanes are inspected. Aging airplanes are divided into three categories for these inspections to ensure that the oldest aircraft are inspected first. For those airplanes that will have exceeded 24 years in service, the first records review and inspection would be required no later than 3 years after the effective date of the proposed rule. For those airplanes exceeding 14 but not 24 years in service at the time the proposed rule becomes effective, the first records review and inspection would be required no later than 5 years after the effective date of the proposed rule. Finally, airplanes that will exceed 14 years in service subsequent to the proposed rule's effective date would be required to undergo the first records review and inspection no later than 5 years after their 14th year in service. All aging airplane records reviews and inspections specified in this section would need to be repeated at intervals not to exceed 5 years.

Proposed paragraph (c) would permit the Administrator to approve 90-day extensions on the threshold and repeat intervals of the aging airplane records reviews and inspections to accommodate unforeseen scheduling conflicts.

Proposed paragraph (d) would require a certificate holder to make an affected airplane and certain associated records available for review and inspection.

Proposed paragraph (e) would require a certificate holder to notify the Administrator at least 60 days before the airplane and its associated records would be made available for review and inspection.

Part 135, Appendix G

This appendix lists the airplanes and the design-life goals that are referenced in proposed § 135.168.

Section 183.33

Paragraph (a) would expand the authority of DARs to permit them to make findings necessary to determine the continuing effectiveness of airworthiness certificates by conducting the record reviews and inspections required by proposed §§ 121.368, 129.20, and 135.422.

Paperwork Reduction Act

This proposal contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). This title, description, and respondent description of the annual burden are shown below.

Title: Aging Aircraft Safety.

Description: The FAA proposes to require all airplanes operated under part 121, all U.S.-registered multiengine airplanes operated under part 129, and all multiengine airplanes used in scheduled operations under part 135 to undergo records reviews and inspections by the Administrator after their 14th year in service to ensure that the maintenance of these airplanes' age-sensitive parts and components has been adequate and timely. The FAA also proposes to permit certain representatives of the Administrator to conduct these inspections. The proposed rule also would prohibit operation of these airplanes after specified deadlines unless damage-tolerance-based inspections and procedures are included in the maintenance or inspection program.

This proposal represents a critical step toward compliance with the AASA of 1991. It would ensure the continuing airworthiness of the preponderance of aging airplanes operating in air transportation by: (1) Mandating aging aircraft records reviews and inspections for all of the airplanes described above, and (2) applying modern damage-tolerance analyses and inspection techniques to older airplane structures that were certificated before such techniques were available.

Description of Respondents: Businesses or other for-profit organizations.

This proposal would constitute a recordkeeping burden for part 135 operators. Airframe flight cycles are not currently required to be collected by operators of small aircraft under part 135. This proposal would require the operator to record and maintain flight cycle information on their aircraft. This information is necessary to allow the FAA and the operator to accurately assess the fatigue condition of the airplane. Under part 135, a total of 209 airplanes would be affected. It is estimated that the reporting and recordkeeping requirements would take 30 minutes per airplane, per month, at an estimated cost of $20.00 per hour. The estimate of the total annual reporting and recordkeeping burden would be $25,080.00.

The agency solicits public comment on the information collection requirements to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by August 2, 1999, and should direct them to the address listed in the **ADDRESSES** section of this document.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The burden associated with

this proposal has been submitted to OMB for review. The FAA will publish a notice in the **Federal Register** notifying the public of the approval numbers and expiration date.

Regulatory Evaluation Summary

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these assessments, the FAA has determined that this proposed rule: (1) Would generate benefits justifying its costs and is not ''significant'' as defined in Executive Order 12866; (2) would be ''significant'' as defined in DOT's Policies and Procedures; (3) would have a significant impact on a substantial number of small entities; and (4) would not restrain international trade. These analyses, available in the docket, are summarized below.

Description of Costs

The proposed rule would generate primary costs to those scheduled operators of multiengine airplanes not currently subject to mandatory damage-tolerance based inspections and procedures. Additional costs may be incurred by manufacturers who participate in the development of these procedures for the affected airplane models. In addition to the costs for development and implementation of new inspections and procedures, the rule would also impose costs related to the additional FAA physical inspections and records reviews mandated by the Congress to assure the continued airworthiness of aging airplanes. These costs would be incurred by both categories of operators of aging airplanes: (1) Those who currently have damage-tolerance based inspections and procedures, and (2) those who would be required to develop such procedures under the proposed rule. Finally, the FAA itself would incur costs in conducting these inspections and records reviews, and in reviewing and approving the operator's inspections and procedures.

It should be noted that the attributed costs of this proposal do not include the expense of making repairs that may be found necessary during either the operator's damage tolerance based inspections or the oversight inspections conducted by the FAA. While the agency recognizes that such repairs may constitute a significant expense, the costs of such repairs is not attributed to this proposed rule because existing FAA regulations require that repairs be made as necessary to assure the airworthiness of the airplane.

It is also noted that this evaluation focuses on existing airplanes and does not directly address the costs that the proposed rule would eventually (15 years after production) impose on new production airplanes, primarily because such costs (particularly their present value) would constitute an insignificant proportion of the costs represented in this study.

Development and Implementation Costs

The development and implementation costs of the inspections and procedures are calculated from a 1996 data collection of the fleet that would be affected. Approximately 1,190 airplanes were identified as being potentially subject to the requirements for development and implementation of the procedures and inspections under the proposed rule. The airplanes were then aggregated into 55 make-model groups consistent with the airplane groupings that would be covered under each individual inspection procedure document. Cost factors, ranging from .3 to 1.0, were then assigned to each airplane model group. These factors represent estimates of the proportion of full development costs that would be incurred for each airplane model group; recognizing that full program development costs for some models would be reduced either due to similarities between certain models or because some models already had a non-damage-tolerance based supplemental inspection program. Applying these cost factors produced the cost equivalence of 47 full SIP development efforts for the 55 models.

The methodology used to estimate the likely costs of the proposal first computed the costs that would be incurred: (1) If it were economically viable for every affected airplane in the database to meet the requirements of the proposed rule, and (2) if every existing, affected airplane continued to operate throughout the study period (year 2018). Following these calculations, the evaluation then estimates: (1) The number of airplanes and models where compliance would not, in fact, be economically viable, (2) the costs that would, instead, be incurred as a result of that inability, and (3) the costs that would not be incurred due to the retirement of airplanes from scheduled service during the study period for reasons unrelated to the proposed rule.

Data were collected and aggregated concerning the average airplane weight in each airplane-model group, the average and maximum ages of the airplanes, the average numbers of seats, the counts of airplanes, whether or not there was a design life goal based on an imposed life limit of a major structural component, and whether each model grouping was already in compliance with a non-damage-tolerance based program as defined in § 91.60. These data are used as controls or factors in the calculations that follow.

Under the proposal, the affected airplanes (15 years or older) would be generally subject to a mandated inspection program within 4 years after the effective date of the rule (the year 2002.) However, in an effort to reduce the economic impact, the proposal would delay the required compliance dates for those airplane models that meet any of several conditions. Compliance would be delayed for airplanes with 9 or fewer passenger seats until the year 2010. Airplanes that have an FAA defined design life goal would not be required to have a damage-tolerance based inspection and procedures program until they had reached their design life goal, or until the year 2010, whichever occurs first. Similarly, compliance could be delayed up until the year 2010 for those models required by airworthiness directive to be maintained under a non-damage-tolerance based program. Based on these criteria, along with airplane age, the expected date of compliance for each group model fleet was projected.

Based on engineering estimates, the cost methodology employs a functional estimate (dependent on the size of the airplane) of the time needed to develop the program for each model. This function produces a range between 10,311 and 25,776 hours necessary to develop the program for each model group. Approximately 841,000 engineering hours would be required to produce inspections and procedures for all affected models. Based on an assumed, fully burdened engineering rate of $95 per hour [1], the SIP development cost estimates for the various model groups range between $980,000 and $2.45 million per model group. The total development cost, assuming full development for every

[1] The rate for contract services was estimated by FAA field engineers, and it is believed to be higher than the cost that most parties will actually incur. The contract rate was used in order to be responsive to small entities that may have to rely on outside resources to develop their program.

model group sums to $79.9 million. These costs were then reduced by the factors described above to account for related model efficiencies and for models with partially compliant programs in place. The application of these factors reduced the range of costs to a level between $310,000 and $2.45 million per group, with a total potential development cost estimate of $67.8 million. Again, at this point in the methodology, the estimates assume that the inspections and procedures would actually be developed for all affected models.

For some airplane models, the FAA expects that the development work would uncover the need for model-specific structural modifications, either to make certain areas of the airplane inspectable or to replace structural elements that are determined to be uninspectable and subject to critical fatigue damage. Absent the engineering development work itself, estimates of the extent and magnitude of these modifications are inexact. As such, the FAA has employed a cost estimate that it considers to be on the high side of feasible costs.

Similar to the development costs, the evaluation assumes a functional estimate of the likely structural modification costs for each airplane based on the size of the airplane. Separate functions were employed for airplanes certificated under Part 25 and for those airplanes certificated under either Part 23 or CAR, based on the logic that the older and smaller airplanes were more likely to require modifications for inspectability. The cost estimates of the likely modifications range from $10,200 to $168,800 per affected airplane depending on airplane size and certification basis. (It should be noted that these costs are per airplane, whereas the inspection and procedure development costs are per model group.)

In the absence of more specific information, the evaluation assumes that one-half [2] of all affected models would require structural modifications as a result of the findings from the inspections and procedures development. The unit modification cost estimates from above were multiplied by the numbers of airplanes in each model group and then by one-half. These products were then summed across all models to yield a total potential modification cost of $65.0 million for the affected fleet.

The third major cost component of the development and implementation requirement involves conducting the actual inspections identified in the program for each model. For each model group, the evaluation assumes that the program directed inspections would begin when the fleet leader for that group reached 20 years of age or at the date the inspections and procedures were due, whichever occurred later. Under this logic, program directed inspections would begin anywhere between the years 2002 and 2014, depending on the characteristics of the individual airplane model group.

Again, based on engineering estimates, the cost methodology employs a functional model (dependent on the size of the airplane) of the expected number of critical locations that would need to be inspected on each airplane. It was assumed that each location would require four hours of inspection and that the burdened (including overhead) labor rate for that work would cost $55 per hour. These estimates produce a likely inspection cost ranging between $6,000 and $30,000 per airplane per inspection. Similar to the estimates of modification costs, these costs cannot be precisely estimated in the absence of the actual inspection and procedures development work for each model, and as such, the FAA has used what it considers to be high-end estimates.

In addition to the actual inspection work itself, the evaluation considers the incremental airplane downtime that would be necessitated by the additional work caused under this proposal. The evaluation assumes that each 40 hours of work caused by this proposal would require one additional day of airplane downtime.[3] The economic cost of downtime was computed under the assumption that the average productive return on capital is equal to 7 percent of the value of that capital per year. Downtime costs were calculated as the product of the number of additional downtime days, divided by 365 days per year, times the average estimated value of the airplane at the year the program would be required, times 7 percent. This produced a unit downtime cost per airplane, per inspection ranging between $63 and $7,181 depending on the age and size of the airplane involved.

The numbers of inspections that could be expected throughout the study period (year 2018) were computed based on the factors: (1) The number of years between the year the program would be due and the year 2018, (2) the annual number of hours that each airplane would fly (ranging between 858 and 1154 hours per year [4], depending on airplane size), and (3) an assumed inspection interval of every 4,000 hours. Finally the unit labor and downtime costs related to the operator inspections were multiplied by the numbers of airplanes in each model and by the expected numbers of inspections for that model during the study period. These products were then summed to represent the total potential operator inspection cost of the proposal: $33.5 million.

For the next step, the three major component costs of the development and implementation requirement were summed. The $67.8 million for developing the inspections and procedures, the $65.0 million for structural modifications, and the $33.5 million for operator inspections produced a total potential cost of $166.3 million. At this point, however, the evaluation methodology recognizes that the potential unit costs of the proposal would not be realized for all models. For some airplane models, the potential unit costs of the proposal could constitute significant proportions of, or actually exceed, the economic values of the airplanes involved.

For each airplane model group, the potential costs of compliance were compared to the estimated economic value of that group in the year the inspections and procedures would be due. In cases where the potential compliance cost would exceed 50 percent of the group value, the methodology assumes that the

[2] The estimate of ''one-half of all affected models'' is based upon expert judgment. The FAA requests public comment and supporting background regarding this estimate .

[3] The rate of incremental downtime per unit of required additional work varies widely depending on the resources that are available at different maintenance facilities, the different types and sizes of airplanes involved, and the concomitant maintenance that is being performed on the airplane during the same maintenance period. Essentially, the amount of downtime is a question of how much parallel work can be conducted on the airplane at one time. This calculation is an attempt to be responsive to industry by not assuming that incremental work could always be done during the time that other maintenance was being performed.

[4] The annual flight hours were based on a regression of aircraft by number of seats and flight hours from page IX–22 of the 1995 FAA Aviation Forecasts. To avoid the appearances of excess precision and to account for the operating differences between transport category and small commuter airplanes, the results were aggregated into two broad categories: airplanes with 9 seats or less, and airplanes with 10 seats or more. The assumed inspection interval of 4,000 hours was estimated by FAA field engineering staff, based on their projections of what would be found to be necessary when the supplemental inspection programs are developed. This number is an aggregated simplification since, especially for larger airplanes, it is expected that different areas of an airplane will have different inspection intervals.

inspections and procedures would not be developed and implemented, and the related compliance costs would not be incurred. Instead, the affected 34 models would be retired or transferred out of scheduled service, and the attributed costs of the proposal for these models would be a 50 percent reduction in their economic value. Failure to comply with the rule would not ground an airplane and eliminate its value, but instead, would preclude its being used in scheduled passenger service. The airplane could still be used for cargo or on-demand service under part 135. This methodology produces a potential cost of $109.1 million for those models where compliance would be economically feasible, and an attributed $33.6 million in reduced value for the models that could not reasonably comply. Total potential costs under this assumption equal $142.7 million.

As noted at the beginning of this section, the $142.7 million estimate was computed under the scenario whereby, external to the effects of the proposed rule, all of the affected 1,190 airplanes that exist today would continue to fly through the end of the study period, year 2018. In fact, some significant proportion of these costs would never be incurred due to normal rotation and retirement of the affected airplanes. The replacement cycle for the airplanes subject to this proposal varies widely within the industry. For some mainstream scheduled commuter carriers, it is common practice that airplanes are routinely replaced due to economic practicalities at a stage where few if any of the costs of this proposal would be incurred. Conversely, the economics of some smaller or niche carriers are such that airplanes may continue to fly for 40 years or more. In the absence of more specific projections, the evaluation incorporates the consensus of FAA field engineers associated with this proposal that at least one-third of the potential $142.7 million costs would not be incurred, leaving a projected cost of $95.1 million. The FAA solicits comments on this particular estimate.

Two relatively minor additions are necessary to compute the full expected cost of developing and implementing the inspections and procedures. First, the new inspections and procedures for each airplane model would have to be incorporated into the existing maintenance program of each affected operator. Based on the projected models where full compliance would be feasible, the FAA estimates that there would be 91 unique model/operator combinations whereby the additional inspections and procedures would have to be incorporated. The analysis assumes that this would require 80 hours of work per model/operator combination at a labor rate of $55 per hour, producing an incorporation cost of $440,400. Added to the $95.1 million cost above, this produces a total operator-manufacturer cost of $95.5 million.

As an additional perspective, the total present value cost of the $80,910,897 to all operators is equivalent to a twenty-year, annualized cost stream of $7,637,416, at 7 percent per year.

Similarly, the FAA would incur costs to review and approve: (1) The inspections and procedures for each model, and (2) their incorporation into the existing maintenance programs for each model/operator combination. The costs to review the inspections and procedures documents are estimated at $184,800, consisting of 160 hours of review at $55 per hour for each of the 21 programs to be developed. The costs for review of incorporating these procedures are projected at $200,200, consisting of 40 hours of review at $55 per hour for each of the 91 expected model/operator combinations. Adding these two figures produces a projected cost of $385,000 to the FAA for reviews related to the development and implementation of the inspections and procedures.

Costs of FAA and/or DAR Inspections

The proposed rule would also necessitate that the FAA inspect all airplanes that are, or due to this proposal would be, subject to a damage-tolerance based inspections and procedures requirement to determine their compliance with the subject programs. These inspections could begin at the start of an airplane's 15th year and would repeat at intervals not to exceed 5 years. Three categories of costs are associated with this provision: (1) The direct costs of the inspectors, (2) the personnel costs incurred by the operator to prepare for the inspections, and (3) the incremental airplane downtime caused by the inspections.

Using the dataset described in the previous section, the FAA estimates that there are 2,850 airplanes age 15 and older that are either currently subject to inspections and procedures requirement as a result of airworthiness directive or would be as a result of the proposed rule. For the purposes of calculation, the evaluation assumes that this number would remain essentially steady over the study period. Higher or lower forecasts of aging airplane fleet size would have a direct relationship to the cost estimates presented here.

The number of person hours required per inspection was estimated as a function of airplane size, ranging linearly from 24 person hours for an airplane of 50,000 pounds or less, up to a maximum of 120 person hours for airplanes of 200,000 pounds or more. In addition, it was assumed that for every individual hour of actual on-site inspection, an additional one-half hour of ancillary or overhead activity would be required. At a labor rate of $55 per hour, the direct inspector costs would range between $1,980 and $9,900 per airplane, per inspection, depending on airplane size. These unit costs were multiplied by the count of airplanes in each weight category and were summed to produce a total inspector cost of $18.7 million for the fleet of affected airplanes age 15 and over. Since each airplane must be inspected every five years, the average annual cost would be one-fifth of that total, or $3.7 million.

The proposed rule would specifically empower designated airworthiness representatives (DAR's) to conduct the records reviews and maintenance inspections required under this proposal. Operators who choose to engage a DAR for the necessary reviews and inspections would directly bear the costs of that work. Conversely, operators who choose to rely on FAA inspectors may lose a degree of control over scheduling and availability but would not bear the direct costs of the inspections. In the absence of more specific information, this analysis assumes that one-half of the work would be accomplished by DAR's, and as such, the burden of this expense would be evenly divided between the operators and the FAA.

The second component of these costs concerns the time spent by operator personnel in their preparations to make the aircraft and its associated records available for inspection and review. The evaluation assumes that operator personnel would expend one-fourth as much time preparing for the inspections as the inspectors would to conduct them (ranging from 6 to 30 hours per airplane inspection, depending on airplane size). Again assuming a burdened labor rate of $55 per hour, the projected cost of operator personnel would total $3.1 million for all affected airplanes over five years, or $624,000 per year.

The third cost component consists of the incremental airplane downtime necessitated by the additional inspections. Depending on airplane size, the estimated additional downtime is projected to range between approximately .7 and 1.6 days per airplane inspection. Parallel to the downtime cost estimations calculated

above for the operator inspections and procedures (7 percent annual value of capital), the analysis projects an economic valuation for these costs ranging from $118 to $2,671 per airplane, per inspection. Multiplying these unit costs by the numbers of airplanes in each size category produces a $3.7 million expense for the affected fleet every five years and an annual expense of $744,000.

The combined cost of the three components for FAA and DAR inspections would total $3,238,218 per year for the operators of affected airplanes, and $1,870,902 per year for the FAA (based on the above assumption that one-half of the inspections would be conducted by DAR's and borne by the operators). Over the 20 year study period, these costs would total $64.8 million ($32.1 million present value) for operators, and $37.4 million ($18.5 million present value) for the FAA.

Combined Costs

The table below summarizes both the standard and present value costs of the proposal. The table shows a combined proposal cost of $198 million with a present value of $99 million.

SUMMARY OF PROJECTED NPRM COSTS

Straight costs	For development and implement	For FAA/DAR inspection and review	Total
To operators of airplanes that need program	$95,524,573	$4,383,547	$99,908,120
Airplanes with program in place	0	60,380,819	60,380,819
Operator subtotal	95,524,573	64,764,366	160,288,939
To the FAA	385,000	37,418,040	37,803,040
Total	95,909,573	102,182,406	198,091,979

Present value costs	For SIP development and implement	For FAA/DAR inspection and review	Total
To operators of airplanes that need program	$48,849,466	$2,170,064	$51,019,530
Airplanes with program in place	0	29,891,367	29,891,367
Operator subtotal	48,849,466	32,061,431	80,910,897
To the FAA	188,856	18,523,703	18,712,559
Total	49,038,322	50,585,134	99,623,455

Description of Benefits

The structural properties of materials change as a result of the prolonged and/or repeated application of stress on that material. Fatigue is the term used to describe this inevitable weakening. After some duration of cyclic stress, the material will fail under the applied load because of fatigue. In critical structural elements, this can result in a catastrophic failure of the airplane.

One manifestation of fatigue in materials is cracking. It is not practical to detect fatigue cracks below a certain size. It is possible, however, to initiate inspections at a point in time, and to repeat those inspections at an interval, whereby a crack that can be detected will be detected and repaired before it can grow to a size where the residual strength of the structure is jeopardized.

FAA regulations addressing fatigue have evolved over time. Prior to 1956, airplanes were originally certificated without any specific consideration being given to metal fatigue. Later, airplanes were designed to meet fail-safe criteria with regard to fatigue requirements. ''Fail-safe'' means that the structure has been evaluated to assure that catastrophic failure of the airplane is not probable after fatigue failure or obvious partial failure of a single, principle structural element. Other airplanes were certificated with design-life limits on the entire airplane or some major structural component (e.g., wing, empennage, fuselage) under the ''safe-life'' concept whereby the structure has been evaluated to be able to withstand the repeated loads at the variable magnitudes expected during its service life without detectable cracks. Other airplanes have a form of supplemental inspection procedures specifically aimed at detecting metal fatigue or corrosion but which are derived from service history and the analysis of fleet leader experience rather than damage-tolerance based engineering analysis.

All of the airplanes that would be required to eventually implement damage-tolerance based inspections and procedures under this proposal fall into one of the categories described above. And even where some fatigue related evaluation and assurance was made at the time the airplane was designed and built, those assurances were never intended to be valid after the airplane exceeded the maximum number of flight hours assumed by the designer. Left unchecked, it is not a question of whether the repeated loadings on aircraft will produce a major structural failure, but rather, when. More than 29 percent of the airplanes under this proposal are already 20 years old or older; 14 percent are over 30 years old; and 7 percent of the airplanes are over 40 years old. Under existing procedures, the FAA cannot assure the continuing airworthiness of these airplanes, and that constitutes an unacceptable risk to air transportation.

The FAA has extensively deliberated on how to mitigate this risk and respond to the Congressional mandate. Technical experts and academic leaders were consulted, and the costs and benefits have been evaluated for numerous alternative approaches. The FAA believes that the damage-tolerance based inspections and procedures in this proposal are the best approach to assure the continued safety of the subject fleet while striking the most cost effective balance of fully responding to the law, minimizing overall costs, and minimizing the impact on small entities.

The purpose of this proposal is to assure the continued structural airworthiness of air carrier aircraft as they continue in service. In this context,

the rule does not increase intended safety; instead, it maintains the level of safety established at the time each model's type design was approved by the FAA. In the absence of this or a similar proposal, the FAA would be unable to determine critical aspects of air transportation safety as the affected airplanes age. Absent the ability to make this determination, the agency would be forced to require these aircraft to be retired at some arbitrary age.

There are, then, two principal benefits of the proposal. The first is that the FAA and the industry would be able to monitor the airworthiness of the affected aircraft as they age, and either take timely corrective action to maintain their continued airworthiness or retire them from service before they become unairworthy. The second benefit is that the aircraft would be able to stay in service longer because their continued airworthiness would be monitored, rather than the aircraft being retired at an arbitrary age.

There are clear safety benefits of this proposal, but it is not possible to reasonably estimate the numbers of accidents that the proposed rule would prevent, primarily because the FAA would take preventive action before an accident pattern due to age emerged.

It is possible, however, to provide a sense of scale by estimating the years of extended service the proposal would have to provide the affected fleet of aircraft to make benefits exceed the related costs. For example, the cost calculations project that it would be economically viable for 927 airplanes to comply with the damage-tolerance based inspection and procedures requirements of the proposal. At the respective times that these requirements would be due, the affected airplanes would have a cumulative estimated value of $649 million [5], with a present value of $321 million. By comparison, the present value cost of compliance for all of the airplanes subject to the proposed requirement is $51 million. If it is assumed that the average annual value of capital is 7 percent of its worth, then extending the useful life of the subject fleet by one year would be worth 7 percent of $321 million, or $22.5 million (again, present value). Accordingly, the projected costs of this provision would be recovered in 2.27 years of extended useful life ($51 million cost divided by $22.5 million annual benefit = 2.27 years). Note that the assumed timing of the ''counter case'' retirement of the affected models would, in turn, change the period necessary to recover the costs. If it is assumed that, in the absence of this proposed rule, no retirement action would have been taken until 5 years after the proposed rule would require SIP development, then the respective value of the subject fleet at that time would be lower ($188 million—present value), causing the annual value of extended useful life to be lower ($13.1 million), and finally requiring more time (3.9 years) to recover costs.

[5] The cumulative value of $649 million represents the resale value of the subject airplanes. This number was calculated using a regression model that projects the future value of an airplane as a function of its size and age at that time.

Comparison of Costs and Benefits

The FAA is unable to quantify the expected benefits of the proposal on the basis of historical accident rates that would be reduced. However, the proposed actions are necessary to ensure the continuing airworthiness of aging airplanes and the FAA finds that the benefits of the proposed rule would justify its costs.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have a significant economic impact on a substantial number of small entities.

1. A Description of the Reasons Why Action by the Agency Is Being Considered

As more fully described in paragraph 2, below, this proposal is required by statute. The agency is considering actions specified in this proposed rule to prevent aviation accidents resulting from structural failure caused by deterioration associated with the aging process.

FAA regulations addressing structural design have evolved over time. Prior to 1956, airplanes were certificated considering the strength of the structure only. No specific consideration was given to metal fatigue. Since 1956, the FAA has incrementally changed its regulations to address fatigue; initially requiring fail-safe or safe-life designs, and currently requiring damage tolerance designs on new transport and commuter airplanes. Damage tolerance represents the most modern approach to continued structural integrity.

Fail-safe means that the structure has been evaluated to assure that catastrophic failure of the airplane is not probable after fatigue failure or obvious partial failure of a single principle structural element. Fail safe designs usually consist of redundant (multiple load path) structures that have no set design life limits.

Safe-life means that the structure has been evaluated to be able to withstand the repeated loads at the variable magnitudes expected during its service life without the development of critical cracks. Safe life designs usually consist of single load path structure that have an established retirement life on one or more major structural components (e.g., wing, empennage, fuselage).

Certain airplanes rely on supplemental inspection procedures specifically aimed at detecting metal fatigue or corrosion, but which are derived from service history and the analysis of fleet leader experience rather than damage-tolerance based engineering analysis.

All of the airplanes that would be required to eventually implement damage-tolerance based inspections and procedures under this proposal, fall into one of the categories described above. This includes aircraft where fatigue related evaluations and assurances were made at the time when the airplane was designed and built. Those assurances were never intended to be valid after the airplane exceeded the maximum number of flight hours assumed by the designer. More than 29 percent of the airplanes under this proposal are already 20 years old or older; 14 percent are over 30 years old; and 7 percent of the airplanes are over 40 years old. Under existing regulations, the continuing airworthiness of these airplanes cannot be assured, and that constitutes an unacceptable risk to air transportation.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to ensure the continuing airworthiness of aging airplanes operating in air transportation: (1) By applying modern damage-tolerance analysis and inspection techniques to older airplane structures that were certificated before such techniques were available, and (2) through mandatory aging-aircraft records reviews and inspections to be performed by the FAA.

This proposal represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. In October of 1991, Congress enacted Title IV of Public Law 102–143, the ''Aging Aircraft Safety Act of 1991,'' to address aging aircraft concerns. The act was subsequently recodified as 49 U.S.C. 44717.

Section 44717 of Title 49 instructs the Administrator to ''prescribe regulations

that ensure the continuing airworthiness of aging aircraft.'' The law also requires the Administrator to ''make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation.'' The purpose of these inspections would be to ''enable the Administrator to decide whether the aircraft is in safe condition and maintained properly for operation in air transportation.'' The law specifies that these inspections and reviews must be carried out as part of each aircraft's heavy maintenance check conducted ''after the 14th year in which the aircraft has been in service.'' It also states that the air carrier must ''demonstrate to the Administrator, as part of the inspection, that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety.''

Section 44717 further states that the rule issued by the Administrator must require an air carrier to make its aircraft, as well as any records about the aircraft that the Administrator may require to carry out the review, available for inspection as necessary to comply with the rule. It also states that the Administrator must establish procedures to be followed for carrying out such an inspection.

3. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes or Types of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

In order for the FAA to fulfill its obligation under 49 U.S.C. 44717, this proposal would require that certain records be made available by the operator. Most of the records that would be required under this proposal are currently required by other regulations. The proposed rule would constitute a minor additional recordkeeping burden for part 135 operators, many of which are small. Airframe flight cycles are not currently required to be collected by operators of small aircraft under part 135. This proposal would require operators to record and maintain flight cycle information on their aircraft. This information is necessary to allow the FAA and the operator to accurately assess the fatigue condition of the airplane.

Under part 135, a total of 209 airplanes would be affected. The FAA estimates that the reporting and recordkeeping requirements would take someone with basic clerk skills 30 minutes per airplane, per month, at a cost rate of $20.00 per hour. These factors translate into an annual recordkeeping cost of $120 per airplane. The projected total annual reporting and recordkeeping burden for all part 135 operators would be $25,080.

4. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rule

The FAA is unaware of any federal rules that would duplicate, overlap, or conflict with the proposed rule.

5. A Description and an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The proposed rule would apply to the operators of all airplanes operated under 14 CFR part 121, all U.S.-registered multiengine airplanes operated under 14 CFR part 129, and all multiengine airplanes used in scheduled operations under 14 CFR part 135. Standard industrial classification coding does not precisely coincide with the subsets of operators who could be affected by the proposed rule. Nevertheless, the following distributions of employment size and estimated receipts for all scheduled air transportation firms (SIC Code 4512) are representative of the operators who would be affected by the proposed rule.

Employment category	Number of firms	Estimated receipts ($1,000's)
0–4	153	$193,166
5–9	57	145,131
10–19	56	198,105
20–99	107	1,347,711
100–499	74	3,137,624
500+	73	112,163,942
Totals	520	117,185,679

Based on existing operator/airplane distributions, the FAA estimates that the proposed rule could eventually affect 226 operators of the subject airplanes. The agency has also estimated the numbers of subject airplanes that each operator uses and has categorized the operators by fleet size. [6]

Subject airplanes operated	Count of operators
1 to 10	137
11 to 20	34
21 to 30	16
31 to 40	10
41 to 50	7
50 Plus	22
Total	226

6. Regulatory Flexibility Cost Analysis

The proposed rule contains two major cost provisions: (1) the development and implementation of new damage-tolerance based inspections and procedures, primarily for smaller airplanes, and (2) the additional FAA physical inspections and records reviews mandated by Congress to assure the continued airworthiness of all aging airplanes. The table below summarizes the derivation of the expected annualized costs per airplane for both provisions based on the categories of airplanes that would be affected. [7]

The table shows that the present value of the estimated cost of the proposal to develop and implement damage-tolerance based inspections and procedures is $48.8 million. Applying this value to the 1,190 affected airplanes produces an average present value cost

[6] Note that the airplanes included here are only those subject to the proposed rule. It is possible that these operators may operate additional airplanes in services not included in the rule; e.g., on-demand, commuter cargo, or single engine.

[7] This analysis, like the full regulatory evaluation, assigns all of the costs to develop the damage-tolerance-based inspections and procedures to the operators. It is likely that some of these costs may be borne by the manufacturers of current, major models.

per airplane of $41,050. As detailed above in the cost methodology section of the regulatory evaluation, the actual costs for any particular airplane may vary from this average cost.

In addition to the total cost per airplane, it is also useful to consider the annualized equivalent of this cost; that is to say, the annual future payments that would be necessary to equal the present value cost of $41,050. Such payments are a function of: (1) The assumed interest rate, and (2) the time period over which the costs would be borne. This analysis applies a 7 percent interest rate. As for the time period, the proposed rule would require that the supplemental inspection programs be developed between the years 2002 and 2010, depending on the characteristics of the individual airplane. For illustration purposes, this analysis assumes that, on average, the program development costs would be borne over a period of ten years. Based on these two assumptions, the ten-year annualized cost of program development and implementation is estimated at $5,845 per airplane.

In addition to the costs to develop the damage-tolerance based inspection procedures, those airplanes over 15 years old would also be subject to the costs associated with the proposed requirement for additional FAA inspections and record reviews. Parallel to the methodology described above, the operators of these airplanes would incur an additional present value cost of $3,827 per airplane, and an annualized cost of $361 per airplane (over the entire 20-year study period.)[8]

	Present value cost	Airplanes	Present value average cost	Years	Annualized cost per airplane
For Models That Need Inspec's and Procedures:					
Develop and implement costs	$48,849,466	1,190	$41,050	10	$5,844.60
FAA/DAR inspection costs	2,170,064	567	3,827	20	361.24
For Models That Have Inspec's and Procedures:					
FAA/DAR inspection costs	29,891,367	2,283	13,093	20	1,235.89

Finally, the costs of additional FAA inspections and records reviews would also be borne by the operators of those airplanes over 15 years old which already have damage-tolerance based inspections and procedures. The estimated present value of these costs is $29.9 million, distributed over 2,283 airplanes. These factors produce a present value estimated cost per airplane of $13,093, and a 20-year annualized cost of $1,236. The average inspection cost for these airplanes is significantly higher than for those airplanes that would need to have damage-tolerance based inspection programs developed because the airplanes with such programs in place are generally much larger.

Using the three separate cost-per-airplane factors described above, a crosstabulation was performed to determine the counts of airplanes that each existing operator employs by cost impact category; that is to say: (1) Whether the airplane currently has or would have to have an inspection program developed, and additionally (2) whether or not the airplane is over 15 years old. While the analysis cannot predict which operators will actually be flying which specific airplanes 10 or 15 years into the future, the methodology described here shows the distributional effects of these costs on the fleet as it is now composed. If the future fleet contains more airplanes over 15 years old, higher costs would be incurred.

The unit annualized costs per airplane for each provision were applied to the dataset of operators and counts of airplanes in each category. The costs were then accumulated to estimate the average annualized impact on each operator. The following table summarizes these computations. Costs are categorized by size of operator, as defined by the current number of subject airplanes operated.

Number of airplanes operated	Count of operators	Minimum annualized cost	Maximum annualized cost	Average annualized cost
1 to 10	137	$0	$61,697	$13,149
11 to 20	34	0	117,550	45,159
21 to 30	16	0	185,091	76,273
31 to 40	10	48,924	201,967	160,378
41 to 50	7	29,223	146.115	74,498
50 plus	22	0	412,030	149,953
Totals	226	0	412,030	44,166

For each category of operators, the table presents the projected minimum, maximum, and average annualized cost per operator. Minimum costs per operator range as low as zero in those cases: (1) where all of an operator's airplanes are models that already have a damage-tolerance based inspection program, and (2) where none of the operator's airplanes is over 14 years old.

As an additional perspective, the annualized equivalent of the $80,910,897 projected total present value cost to all operators is $7,637,416 (at 7% over 20 years.)

Again, it is noted that the cost figures above are based on averages. The actual cost impacts as well as the timing and duration of those costs could vary significantly across individual operators. As explained elsewhere in this notice, the FAA recognizes that the development of damage-tolerance based inspections and procedures may be technically or economically

[8] The costs to develop and implement a damage-tolerance-based program are largely front-loaded. By comparison, the costs of the additional FAA inspections and records reviews would continue relatively evenly over time.

impracticable for some airplane models.[9]

7. Description of Alternatives

The FAA has considered several alternative approaches to this proposed rulemaking and has attempted to minimize the potential economic impact of the proposal, especially the impact on the operation of aircraft most likely to be used by small entities, while meeting the agency's primary responsibility for aviation safety and its particular obligation under 49 U.S.C. 44717 to ensure the continuing airworthiness of aging aircraft. The primary alternatives of the proposal can be categorized along three broad questions:

- Which aircraft and which aircraft operations should be included in this proposal?
- What compliance timetable should be prescribed in meeting the proposed requirements?
- And, how rigorous should the requirements be?

A. Aircraft Included in the Proposal

As proposed, this rule would apply to all airplanes operated under part 121, all U.S.-registered multiengine airplanes operated under part 129, and all multiengine airplanes used in scheduled operations under part 135. This proposed rule would not cover helicopters, single engine airplanes operated under part 135 or part 129, airplanes used in cargo operations under part 135, or airplanes used in unscheduled (on-demand) operations under part 135. Section 44717 of Title 49 applies to ''each aircraft an air carrier uses to provide air transportation.'' As such, the statute makes no exception for aircraft used by small entity air carriers to provide air transportation. Because this proposal does not include all aircraft described in the statute, the FAA is considering future rulemaking to address the remaining aircraft.

The aircraft and operations omitted from this proposal are not exclusively operated by small entities, but the FAA recognizes that they are more likely to be operated by small entities than, for example, large transport category airplanes in scheduled service. It should be recognized, however, that the problem addressed by Section 44717, the safety of aging aircraft, does not depend on whether the entity operating the aircraft is large or small.

B. Compliance Timetable

In general, the proposed rule would require that damage-tolerance based inspections and procedures be developed and implemented within four years of the effective date of the rule. The FAA recognizes that additional compliance time can reduce the burden on small and large entities, and the agency has made every effort to extend the compliance period in those cases where it would be reasonable to do so. Accordingly, compliance under this proposal could be delayed for airplane models with 9 or fewer passenger seats until the year 2010. Airplanes that have an FAA defined design life goal would not be required to have damage-tolerance based inspections and procedures until they had reached their design life goal, or until the year 2010, whichever occurs first. Similarly, compliance could be delayed up until the year 2010 for those models currently required by airworthiness directive to be maintained under a non damage-tolerance based inspection program.

C. Rigor of Requirements

As noted in Subsection 1, above, FAA regulations addressing structural design have evolved over time. Non damage-tolerance based supplemental inspection programs, based on Advisory Circular 91–60, have been mandated by airworthiness directives for several existing models. Those inspections and procedures address known service experience problems, but they do not anticipate the possibility of future fatigue cracks that could be predicted through the use of damage-tolerance based principles. Evidence to date suggests that when all critical structures are included, damage-tolerance based inspections and procedures provide the best approach to address aircraft fatigue. As such, this proposal would require that all of the airplanes subject to this rule, including those with existing service based procedures, meet this higher level of assessment and inspection by the year 2010. Obviously, the non damage-tolerance based program would induce lower costs but with a concomitant reduction in safety assurance.

In attempting to strike a permissible balance, it is important to note that this proposed rule would not mandate the most rigorous level of inspection procedures and analysis presently available. The FAA has published a proposed rule for future certifications of transport category airplanes (part 25) that would require the use of ''initial flaw'' consideration in the damage-tolerance and fatigue evaluation of structure for those airplanes. Under that proposal, the inspection thresholds for certain critical structure would have to be established based on crack growth analyses or tests assuming that the structure contains an initial flaw of the maximum probable size that could exist as a result of either manufacturing or service induced damage. The FAA holds that ''initial flaw'' consideration is an appropriate regulatory requirement for newly certificated transport category airplanes. By comparison, the existing aging airplanes under this proposed rule would be better served by addressing ''initial flaw'' procedures in advisory circular material, thereby maximizing the flexibility of operators to consider the best equivalent means of compliance for their particular airplane models.

8. Compliance Assistance

In its efforts to assist small entities and other affected parties in complying with the proposed rule, the FAA is publishing an advisory circular, ''Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Supplemental Inspection Programs.'' A notice of availability for this circular will be published concurrently with the proposed rule. This circular will detail acceptable means of compliance with the proposed rule.

In addition, the FAA has undertaken a research program to develop a simplified damage-tolerance based methodology, directly applicable to commuter sized airplanes. The results of this work will be available in the public domain and could be used by small manufacturers or designated engineering representatives (DERs) to aid their development of the inspections needed to comply with the proposed rule. Again, however, the benefits of a simplified damage-tolerance based methodology for smaller airplanes would be realized by both small and large air carriers.

The estimated cost to the government to develop the generic methodology is $4 million. To date, approximately $2.2 million has been spent and work is expected to be completed in fiscal year 2000. By funding the development of a generic damage tolerance methodology applicable to the entire commuter fleet, the FAA intends to reduce the costs to small entities and other operators subject to the proposed rule. It should be noted that the cost estimates in the economic analysis above reflect the full costs of implementing the proposed rule and do not account for the possible reductions in costs that could be afforded by this research.

[9] This cost discussion is meant to be responsive to the needs of small business and to the Small Business Administration. Currently the FAA is trying to establish standards for ''significant cost''.

Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

International Trade Impact Analysis

The provisions of this proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

International Compatibility

When this proposal becomes a final rule, the FAA intends to recommend that the ICAO and the JAA consider making similar changes to their recommended practices and requirements.

Unfunded Mandates Reform Act Assessment

Based on these estimates, the FAA does not consider the effects of this proposed rule sufficient to trigger the requirements of the Unfunded Mandates Reform Act or to be a ''major'' rulemaking for the purposes of the Congressional review requirements under the Small Business Regulatory Enforcement Fairness Act. The FAA requests comments on its cost estimates with respect to those statutes.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in 14 CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to all airplanes under part 121 and many airplanes under part 135, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 119

Air carriers, Air transportation, Aircraft, Aviation safety, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 119, 121, 129, 135, and 183 of Title 14, Code of Federal Regulations (14 CFR parts 119, 121, 129, 135, and 183) as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Section 119.3 is amended by adding the definition of ''years in service'' after the definition of ''When common carriage is not involved or operations not involving common carriage'' to read as follows:

§ 119.3 Definitions.

* * * * *

Years in service means the calendar time elapsed since an airplane was issued its first U.S. or first foreign airworthiness certificate.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Section 121.368 is added to read as follows:

§ 121.368 Aging airplane records reviews and inspections.

(a) *Applicability.* This section identifies the records and requirements necessary for the certificate holder to demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety. The Administrator reviews these records and conducts the inspections necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

(b) No certificate holder may operate an airplane under this part after the dates specified herein unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane record reviews and inspections.

(1) For an airplane that has exceeded 24 years in service on [the effective date of the rule], no later than [3 years after the effective date of the rule] and thereafter at intervals not to exceed 5 years.

(2) For an airplane that has exceeded 14 years in service but not 24 years in service on [the effective date of the rule], no later than [5 years after the effective date of the rule] and thereafter at intervals not to exceed 5 years.

(3) For an airplane that has not exceeded 14 years in service on [the effective date of the rule], no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 5 years.

(c) In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond a date specified in paragraph (b) of this section.

(d) The certificate holder must make available to the Administrator each airplane for which a records review and inspection is required under this section, in a condition for inspection specified by the Administrator, together with the following records:

(1) Total years in service;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last records review and inspection required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components that are required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 121.370a.

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for those repairs.

(e) Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be available for review and inspection.

5. Section 121.370 is added to read as follows:

§ 121.370a Supplemental inspections.

(a) Except as otherwise provided in this section, no certificate holder may operate an airplane under this part after [4 years after the effective date of the rule] unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(b) A certificate holder may operate an airplane listed in appendix M to this part as follows:

(1) If the time in service of the airplane reaches the design-life goal listed in appendix M to this part before [4 years after the effective date of the rule], the certificate holder may operate that airplane until [4 years after the effective date of the rule]; after that date, the airplane may not be operated unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(2) If the time in service of the airplane reaches the design-life goal listed in appendix M to this part on or after [4 years after the effective date of the rule], the certificate holder may operate that airplane until the date the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the airplane may not be operated unless the maintenance program for that airplane includes the damage-tolerance-based inspections and procedures.

(c) A certificate holder may operate an airplane for which an airworthiness directive requires the maintenance program to include non-damage-tolerance-based supplemental inspections and procedures until December 20, 2010; after that date, the certificate holder may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

6. Appendix N to part 121 is added to read as follows:

APPENDIX N TO PART 121—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hrs)
Beech Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	30,000
—BAe Jetstream 3201	19+2	A56EU	30,000
De Havilland Aircraft Co.:			
—DHC–6	22+2	A9EA	33,000
Dornier GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer):			
Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Company:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman:			
PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Short Brothers Ltd.:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3-Sherpa	39+2	A41EU	40,000

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

8. Section 129.1 is revised to read as follows:

§ 129.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part prescribes rules governing the operation within the United States of each foreign air carrier holding a permit issued by the Civil Aeronautics Board or the Department of Transportation under 49 U.S.C. 41301 through 41306 (formerly section 402 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1372), as amended), or other appropriate economic or exemption authority issued by the Civil Aeronautics Board or the Department of Transportation.

(b) Sections 129.14, 129.16, and 129.20 also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier. For the purpose of this part, a foreign person is any person, not a citizen of the United States, who operates a U.S.-registered aircraft in common carriage solely outside the United States.

9. Section 129.16 is added to read as follows:

§ 129.16 Supplemental inspections for U.S.-registered aircraft.

(a) Except as otherwise provided in this section, no foreign air carrier or foreign person may operate a U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats under this part after [4 years after the effective date of this rule] unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(b) Except as otherwise provided in this section, no foreign air carrier or foreign person may operate a U.S.-registered multiengine airplane initially type certificated with nine or fewer passenger seats under this part after December 20, 2010, unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(c) A foreign air carrier or foreign person may operate a U.S.-registered airplane listed in appendix B to this part as follows:

(1) If the time in service of the airplane reaches the design-life goal listed in appendix B to this part before [4 years after the effective date of the rule], the foreign air carrier or foreign person may operate that airplane until [4 years after the effective date of the rule]; after that date, the airplane may not be operated unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(2) If the time in service of the airplane reaches the design-life goal listed in appendix B to this part on or after [4 years after the effective date of the rule], the foreign air carrier or foreign person may operate that airplane until the date the time-in-service of the airplane reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the airplane may not be operated unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(d) A foreign air carrier or foreign person may operate a U.S.-registered airplane for which an airworthiness directive requires the maintenance program to include non-damage-tolerance-based supplemental inspections and procedures until December 20, 2010. After that date, the foreign air carrier or foreign person may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

10. Section 129.33 is added to read as follows:

§ 129.33 Aging airplane records reviews and inspections for U.S.-registered aircraft.

(a) *Applicability*. This section identifies the records and requirements necessary for a foreign air carrier or foreign person to demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety. The Administrator reviews these records and conducts the inspections necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

(b) After the dates specified herein, no foreign air carrier or foreign person may operate a U.S.-registered airplane under this part unless the Administrator has notified the foreign air carrier or foreign person that the Administrator has completed the aging airplane record reviews and inspections.

(1) For an airplane that has exceeded 24 years in service on [the effective date of the rule], no later than [3 years after the effective date of the rule], and thereafter at intervals not to exceed 5 years.

(2) For an airplane that has exceeded 14 years in service, but not 24 years in service, on [the effective date of the rule], no later than [5 years after the effective date of the rule], and thereafter at intervals not to exceed 5 years.

(3) For an airplane that has not exceeded 14 years in service on [the effective date of the rule], no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 5 years.

(c) In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond a date specified in paragraph (b) of this section.

(d) The foreign air carrier or foreign person must make available to the Administrator each U.S.-registered airplane for which a records review and inspection is required under this section, in a condition for inspection specified by the Administrator, together with the following records:

(1) Total years in service;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last records review and inspection required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components that are required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 121.370 of this chapter.

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for these repairs.

(e) Each foreign air carrier or foreign person must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be available for inspection and review.

11. Appendix B to part 129 is added to read as follows:

APPENDIX B TO PART 129—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hrs)
Beech Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	30,000
—BAe Jetstream 3201	19+2	A56EU	30,000
Cessna Aircraft Co.:			
—Cessna 402 Series (all models except 402C)	8+2	A7CE	12,000
—Cessna 402C	8+2	A7CE	7,000
De Havilland Aircraft Co.:			
—DHC–6	22+2	A9EA	33,000
Dornier GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer):			
Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Company:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman:			
PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Piper Aircraft Co.:			
—PA 31 Navajo	6+2	A20SO	11,000
—PA 31–300 Navajo	6+2	A20SO	15,500
—PA 31P Pressurized Navajo	6+2	A8EA	14,000
—PA 31T Cheyenne and Cheyenne II	7+2	A8EA	12,000
—PA 31–350 Chieftain and (T–1020)	9+2	A20SO	13,000
—PA 31–325 Navajo CR	9+2	A20SO	11,000
—PA 31T2 Cheyenne II XL	5+2	A8EA	11,400
—PA 31T3 (T–1040) without tip tanks	9+2	A8EA	17,400
—PA 31T3 (T–1040) with tip tanks	9+2	A8EA	13,800
Short Brothers Ltd.:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3-Sherpa	39+2	A41EU	40,000

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

13. Section 135.168 is added to read as follows:

§ 135.168 Supplemental inspections.

(a) Except as otherwise provided in this section, no certificate holder may operate a multiengine airplane initially type certificated with 10 or more passenger seats in scheduled operations under this part after [4 years after the effective date of this rule], unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

(b) Except as otherwise provided in this section, no certificate holder may operate a multiengine airplane initially type certificated with nine or fewer passenger seats in scheduled operation under this part after December 20, 2010, unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

(c) A certificate holder may operate an airplane listed in appendix F to this part as follows:

(1) If the time in service of the airplane reaches the design-life goal listed in appendix F to this part before [4 years after the effective date of the rule], the certificate holder may operate that airplane until [4 years after the effective date of the rule]; after that date, the airplane may not be operated unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

(2) If the time in service of the airplane reaches the design-life goal

listed in appendix F to this part on or after [4 years after the effective date of the rule], the certificate holder may operate that airplane until the date the time-in-service of the airplane reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the airplane may not be operated unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

(d) A certificate holder may operate an airplane for which an airworthiness directive requires the inspection program to include non-damage-tolerance-based supplemental inspections and procedures until December 20, 2010; after that date, the holder may not operate the airplane unless the inspection program for that airplane includes damage-tolerance-based inspections and procedures.

14. Section 135.422 is added to read as follows:

§ 135.422 Aging airplane records reviews and inspections.

(a) *Applicability*. This section identifies the records and requirements necessary for the certificate holder operating a multiengine airplane in scheduled operations to demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety. The Administrator reviews these records and conducts the inspections necessary to decide whether an airplane is in safe condition and maintained properly for operation in air transportation.

(b) After the dates specified herein, no certificate holder may operate a multiengine airplane under this part in scheduled operation unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane records reviews and inspections.

(1) For an airplane that has exceeded 24 years in service on [the effective date of the rule], no later than [3 years after the effective date of the rule], and thereafter at intervals not to exceed 5 years.

(2) For an airplane that has exceeded 14 years in service, but not 24 years in service, on [the effective date of the rule], no later than [5 years after the effective date of the rule], and thereafter at intervals not to exceed 5 years.

(3) For an airplane that has not exceeded 14 years in service on [the effective date of the rule], no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 5 years.

(c) In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond a date specified in paragraph (b) of this section.

(d) The certificate holder must make available to the Administrator each airplane for which a records review and inspection is required under this section, in a condition for inspection specified by the Administrator, together with the following records:

(1) Total years in service;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last records review and inspection required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components that are required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 135.168.

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for these repairs.

(e) Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be available for inspection and review.

15. Appendix G to part 135 is added to read as follows:

APPENDIX G TO PART 135—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hrs)
Beech Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	30,000
—BAe Jetstream 3201	19+2	A56EU	30,000
Cessna Aircraft Co.:			
—Cessna 402 Series (all models except 402C)	8+2	A7CE	12,000
—Cessna 402C	8+2	A7CE	7,700
De Havilland Aircraft Co.:			
—DHC–6	22+2	A9EA	33,000
Dornier GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer):			
Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Company:			
—SA226–TC	20+2	A8SW	35,000

APPENDIX G TO PART 135—DESIGN-LIFE GOALS—Continued

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hrs)
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman:			
PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Piper Aircraft Co.:			
—PA 31 Navajo	6+2	A20SO	11,000
—PA 31–300 Navajo	6+2	A20SO	15,500
—PA 31P Pressurized Navajo	6+2	A8EA	14,000
—PA 31T Cheyenne and Cheyenne II	7+2	A8EA	12,000
—PA 31–350 Chieftain and (T–1020)	9+2	A20SO	13,000
—PA 31–325 Navajo CR	9+2	A20SO	11,000
—PA 31T2 Cheyenne II XL	9+2	A20SO	11,400
—PA 31T3 (T–1040) without tip tanks	9+2	A8EA	17,400
—PA 31T3 (T–1040) with tip tanks	9+2	A8EA	13,800
Short Brothers Ltd.:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3–Sherpa	39+2	A41EU	40,000

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

16. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 45303.

17. Section 183.33 is amended by revising paragraph (a) to read as follows:

§ 183.33 Designated Airworthiness Representative

* * * * *

(a) Perform examination, inspection, and testing services necessary to the issuance of, and to determine the continuing effectiveness of certificates, including issuing certificates, as authorized by the Director, Flight Standards Service, in the area of maintenance, or as authorized by the Director, Aircraft Certification Service, in the areas of manufacturing and engineering.

* * * * *

Issued in Washington, DC, on March 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–7443 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 91-MA, Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Damage-Tolerance-Based Inspections and Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 91-MA, which provides information and guidance to manufacturers and operators for use in developing contained structural integrity programs to ensure the safe operation of small transport and commuter airplanes throughout their operational usage. The material provides an acceptable means, but not the only means, of showing compliance with the operational requirements of the Federal Aviation Regulations applicable to the establishment of a damage-tolerance-based inspections and procedures.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send all comments on the proposed AC to: Bobby Sexton, ACE-102, Aging Airplane Program Manager, Small Airplane Directorate, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas, Missouri, 64106; telephone number (816) 426-3241.

FOR FURTHER INFORMATION CONTACT: Bobby Sexton, ACE-102, Aging Airplane Program Manager, Small Airplane Directorate, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas, Missouri, 64106; telephone number: (816) 426-3241.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's webgage at http://www.faa.gov/avr/arm/nprm/nprm.htm. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 91-MA, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Discussion

Service experience has revealed a need to assess the continuing airworthiness of small transport and commuter sized airplanes as they age. The structural integrity of these airplanes should be assessed on the basis of the most modern tools of analyses, testing, and nondestructive inspections in conjunction with the gathering of operational service experience. Fatigue cracking is usage dependent and, if left uncorrected, will degrade the integrity of the airframe to unsafe levels. Additional inspections, component modification, or structural component replacement may be essential to maintain the required level of safety.

Increased utilization, longer operation, and the high safety demands imposed on airplanes currently operating in air transportation service indicates that there is a need for a program to provide a high level of structural integrity for all airplanes in the commuter air transportation fleet. Accordingly, the program outlined in the draft AC is intended to describe a structural integrity assessment of each airplane type, to be accomplished by its manufacturer or other competent engineering organization have access to design data; and the adaptation of the results of that assessment into each operator's maintenance program.

Issued in Washington, DC on March 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–7445 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 120–XX, Aging Airplane Records Reviews and Inspections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 120–XX, which provides guidance pertaining to aging airplane records reviews and inspections that are accomplished to satisfy the requirements of the final rule entitled Aging Aircraft Safety which was enacted in response to a statutory requirement, the Aging Aircraft Safety Act of 1991.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send all comments on the proposed AC to: Frederick Sobeck, AFS–300, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267–7355.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, AFS–300, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone number: (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's webpage at http://www.faa.gov/avr/arm/nprm/nprm.htm. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 120–XX, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Discussion

To address aging aircraft concerns, in October 1991, Congress enacted Title IV of Public Law 102–143, known as the Aging Aircraft Safety Act of 1991, which was subsequently codified as 49 U.S.C. 44717. The law instructed the Administrator to prescribe regulations that would ensure the continued airworthiness of aging aircraft. The law also instructed the Administrator to conduct inspections and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation. These inspections and records reviews were intended to enable the Administrator to decide whether aging aircraft are in a safe condition and maintained properly for operation in air transportation. The law also required the Administrator to establish procedures to be followed for performing such inspections.

In addition to imposing obligations on the Administrator, the law stated that air carriers must demonstrate that the maintenance of their aircraft's age-sensitive parts and components has been adequate and timely, and operators must make their aircraft and aircraft records available for inspection.

Issued in Washington, DC, on March 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–7444 Filed 4–1–99; 8:45 am]

BILLING CODE 4910–13–M

Friday
April 2, 1999

Part IV

Department of Housing and Urban Development

24 CFR Part 100

Implementation of the Housing for Older Persons Act of 1995; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–4094–F–02]

RIN 2529–AA80

Implementation of the Housing for Older Persons Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the Housing for Older Persons Act of 1995 (HOPA). HOPA amended the requirements for qualification for the housing for persons who are 55 years of age or older portion of the ''housing for older persons'' exemption established in the Fair Housing Act. In addition, HOPA established a good faith defense against civil money damages for persons who reasonably relied in good faith on the application of the ''housing for older persons'' exemption even when, in fact, the housing provider did not qualify for the exemption. This rule updates HUD's regulations to reflect the changes made by HOPA.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Room 5206, 451 Seventh Street, SW, Washington, DC 20410–0500, telephone (202) 708–0836. (This is not a toll-free number.) Hearing or speech-impaired individuals may reach this office by calling the toll-free Federal Information Relay Service (TTY) at 1–800–877–8399.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in §§ 100.306 and 100.307 of this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned approval number 2529–0046. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Background

A. The Housing for Older Persons Act of 1995

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) (the Act) exempts ''housing for older persons'' from the Act's prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older which satisfies certain criteria. HUD has adopted implementing regulations further defining the ''housing for older persons'' exemption at 24 CFR part 100, subpart E.

The Housing for Older Persons Act of 1995 (Pub. L. 104–76, 109 Stat. 787, approved December 28, 1995) (HOPA) revised the definition of the original exemption contained in the Act for housing designed and operated for occupancy by persons who are 55 years of age of older. Section 2 of HOPA redefined this portion of the exemption to describe housing:

(C) Intended and operated for occupancy by persons 55 years of age or older, and—

(i) At least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

(iii) The housing facility or community complies with rules issued by the Secretary [of HUD] for verification of occupancy, which shall—

(I) Provide for verification by reliable surveys and affidavits; and

(II) Include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

The new requirements under HOPA are equivalent to the original provisions of the Fair Housing Act. Like the original section 807(b)(C) of the Act, HOPA requires that a facility or community seeking to claim the 55 and older exemption show three factors: (1) That the housing be intended and operated for persons 55 years of age or older; (2) that at least 80 percent of the occupied units be occupied by at least one person who is 55 years of age or older; and (3) the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption. The housing facility or community must also comply with rules issued by HUD for the verification of occupancy.

One substantive change made by HOPA was the elimination of ''significant facilities and services'' previously required by the Act to meet the 55-and-older exemption. Section 807(b)(2)(C) of the Act originally required that housing designed for persons who are 55 years of age or older provide ''significant facilities and services specifically designed to meet the physical or social needs of older persons.'' HOPA also added the new requirement that a housing facility or community seeking the 55-and-older exemption comply with HUD regulations on verification of occupancy.

In addition, section 3 of HOPA added a new section 807(b)(5) to the Act. This new section established a good faith defense against civil money damages for a person who reasonably relies in good faith on the application of the housing for older persons exemption, even when, in fact, the housing facility or community does not qualify for the exemption. New section 807(b)(5) provides:

(5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

(B) For purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—

(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

(ii) The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

B. This Rule

This rule revises § 100.304, which presents an overview of the exemption, to more closely track the HOPA requirements. The rule also creates a new § 100.305, which updates the 80 percent occupancy requirements. A new § 100.306 describes how a facility or community may establish its intent to operate as housing designed for persons at least 55 years of age or older. New § 100.307 sets forth the necessary procedures for verification of the 80 percent occupancy requirements. Finally, a new § 100.308 implements the good faith defense against civil money damages.

Section 2 of HOPA requires that any implementing HUD regulations ''include examples of the types of policies and procedures relevant to a determination of compliance with'' the statute's intent requirement. Accordingly, paragraph (a) of § 100.306 lists several factors which HUD considers relevant in determining whether the housing facility or community intends to operate as housing for older persons. Section 100.306(b) states, however, that such

phrases such as ''adult living'', ''adult community'', or similar statements are inconsistent with the intent to establish housing for older persons. Such phrases are not evidence that the facility or community intends to operate as housing for older persons and are inconsistent with that intent. HUD, in order to make an assessment of intent, will consider all of the measures taken by the facility or community to demonstrate the intent required by the Act. Moreover, the housing facility or community may not evict or terminate leases of families with children in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

HUD also provides guidance to assist housing facilities and communities in applying the requirements of this rule. These examples are contained in an appendix to this rule. The appendix will not be codified in title 24 of the CFR. HUD may update or revise the appendix as necessary.

C. Discussion of Public Comments on the January 19, 1997 Proposed Rule

The Housing for Older Persons Act (HOPA) was a remedial amendment to the Fair Housing Act overwhelmingly passed by Congress in an attempt to clarify the Act's senior housing exemption which Congress found was being effectively repealed by the judicial and administrative interpretation which the exemption had received.

Senator Brown described the purpose of HOPA as ''making the law clearer and more workable for seniors * * * to protect seniors so that they can, if they wish to, move to housing where they are protected in their safety and their privacy.'' (Congressional Record, S. 18064). Senate Report #104–172 describes the purpose as a ''return to the original intent of the Fair Housing Act exemption Congress created in 1988. HOPA is designed to make it easier for a housing community of older persons to determine whether they qualify for the Fair Housing Act exemption''. While House Report 104–91 states ''legislation is necessary to establish a workable and fair exemption to protect senior citizens who wish to live in retirement community''. In short, HOPA was passed in order to protect senior housing.

HUD published a proposed rule for comment on January 14, 1997, at 62 FR 2000, and received approximately 130 comments on the proposed rule. The comments were evenly split between comments which expressed the belief that the regulation went too far in allowing the creation or continuation of senior housing and those which generally supported the rule but felt that it should have done more to stabilize the conditions at senior housing communities or which objected to isolated provisions. Several of the specific points raised will be addressed later in the preamble and have resulted in changes and refinements to the proposed regulation. As a general response, some of the comments from each side are based upon premises with which HUD does not agree. In addition, Congress did not state that HOPA should be retroactively applied. Therefore, a matter involving a claim of alleged discrimination occurring *before* December 28, 1995 will be covered by those laws and regulations in effect at the time of the claimed violation. Claims of alleged discrimination occurring after December 28, 1995, but before the effective date of this regulation will be analyzed using HOPA and its legislative history.

Those who maintain that HUD's interpretation of the exemption should be narrowed ignore the history of the senior housing exemption and HOPA. Congress made explicit findings that HOPA was necessary because of the narrow construction afforded the senior housing exemption in the past. It would be contrary to the intent of the HOPA to abolish the ''significant facilities and services'' requirement that hindered senior housing only to construct new impediments by strictly construing the remaining requirements. At the same time, Congress provided no indication that it intended to change the usual standards applicable in judicial constructions of exemptions, and, thus, HUD believes that, as with any exemption to the Fair Housing Act, the burden will be on the housing provider to prove that it meets the requirements set forth in this regulation in order to qualify for the exemption.

Others who believed that HUD should go further in specifying exactly what must be done by each facility and community fail to take into full account the limited nature of the exemption provided under the law. The Fair Housing Act and its senior exemptions, as amended by HOPA, do not provide standards for the proper operation of a senior community; they are designed only to advise communities and facilities what will not violate the familial status provisions of the Act. Most aspects of living in a senior community are governed by private contractual agreements between senior housing developers and individuals who purchased or rented the dwelling. Other aspects may be governed by state or local ordinances, particularly regarding mobile and manufactured homes. These private agreements and local laws, for the most part, are left undisturbed by HUD's interpretation of HOPA.

HUD has also taken into consideration the broader historical aspects of the senior housing issue. Until the advent of the familial status protection established in the Fair Housing Amendments Act of 1988, the senior housing industry was a well-established, accepted component of housing options for seniors. With no federal law directly applicable, the industry developed in a variety of configurations and circumstances. Age restrictions in individual communities started at various ages—age 40, age 45, age 50 and so forth. Many communities defined themselves as ''adult'' communities, but in operation served seniors. Many senior communities served mature residents who are active, participating members of their communities. State and local law, local custom, and various provisions of covenants and restrictions affected how rules for occupancy were established or changed, against whom those rules could be enforced, the senior community's interplay with state and local land use and anti-discrimination statutes, and other practical day-to-day issues of senior housing. Against the backdrop of the nearly infinite number of possible scenarios, HUD and courts attempted to enforce the 1988 provisions of the exemptions. Congress has determined that those efforts did not achieve the desired results, and amended the Act. The rules that are included here in final form have attempted to the address the issue in the broadest possible terms to account for the large variety of senior communities while being sufficiently detailed to provide clear guidance on the requirements of the senior housing exemption, without dictating results which may be inconsistent with local practice or deny flexibility in a variety of circumstances.

Opposition to the proposed rule came largely from Fair Housing advocacy groups and some housing industry groups. The comments of the Northern California Fair Housing Coalition (NCFHC), a coalition of 18 fair housing groups, is a representative example of the issues raised by these groups. NCFHC urges that the rule be withdrawn or significantly altered based on a strict interpretation of the exemption which HUD believes is contrary to the clear Congressional intent. Specifically, NCHFC considers § 100.305(e)(5), the so called ''transition provision,'' to be without legal authority and bad public policy because, they assert, it would allow communities with

no senior residents to declare themselves housing for persons who are 55 years of age or older housing and discriminate against families with children until they reach the 80% senior occupancy minimum.

A transition provision was first adopted in the August 18, 1995 final rule which was implemented prior to the passage of HOPA, but the entire final rule was withdrawn in April 1996 after Congress passed HOPA. The intent of the original transition provision was to provide a mechanism to return to senior status for those former senior communities who had abandoned, or did not achieve, senior status for fear of law suits spawned by the pre-HOPA interpretations of the exemption, especially the requirement that significant facilities and services be provided, or for other reasons which Congress found were contrary to the original intent of the exemption. As it has done in the past, HUD is promulgating a transition provision under the authority of 42 U.S.C. 3607. As HUD noted in its comments to the previous final rule, published on August 18, 1995:

> The Act provides that a property ''shall not fail to meet the requirements for housing for older persons by reason of * * * (B) unoccupied units * * *'' 42 U.S.C. 3607. HUD believes it is justified in interpreting the Act to allow a community which, although it does not currently meet the 80 percent occupancy requirement, to reserve all unoccupied units for occupancy by a person 55 years of age or older. This may be the only way for a community which believed that it was ineligible for ''housing for older persons'' status, and which has therefore permitted occupancy by families, to qualify for the exemption.

HUD is concerned, however, that an overly broad transition provision may allow qualification for communities beyond those which temporarily were unable to qualify for the exemption because of the significant facilities and services provision or other interpretations of the exemption, and which would otherwise have been eligible for the exemption. For that reason, HUD has retained the transition provision, but only for a period of one year from the date on which this regulation becomes final, to allow communities which wish to qualify for the 55-and-older exemption to qualify. At the end of the one year period, the transition period will expire. HUD believes that this is a more balanced approach that achieves a common sense solution to a problem with equities on both sides. This represents the most significant change in the rule. The one year limitation period will require that those communities seeking to meet the 80% requirement have at least 80% of their occupied units occupied by at least one person who is 55 years of age or older by the expiration of the period in order to qualify for the exemption. Vacant units reserved for occupancy by persons who are 55 of age or older may not be counted in achieving this standard. The transition provision may not be facilitated by evicting or terminating the leases of resident households with minor children.

The transition provision will expire at the end of one year from the effective date of this regulation. A community or facility which attempts to meet the exemption during the transition period, unsuccessfully, must cease reserving vacant units for persons who are 55 years of age or older at the end of that period. Even if a facility or community fails to meet the exemption during this transition period, it will not be liable for discrimination on the basis of familial status resulting from actions taken during the one year period if it complies with all of the transition requirements during that time.

The NCFHC further objects to § 100.305(c)(2) which references ''temporarily vacant'' dwellings. This provision is in response to the situation where individuals move into ''senior parks'' as summer or winter homes while others in the community remain year round. NCFHC argues that only ''primary residences'' should be covered. There is no support in the Congressional history or in HOPA for this interpretation. HUD has held that a ''dwelling'' under the Act can cover summer homes or even timeshare units. There is no reason to make a distinction for senior housing. A unit which is occupied, even if temporarily vacant while its residents are absent seasonally, on vacation, or hospitalized, for example, is still occupied by that resident. If, on the other hand, a unit is leased by its owners during their absence, its current occupants, not its owners, are considered for purposes of the exemption.

The fair housing advocates and several attorneys further objected to § 100.306(c) which addresses the effect of language in housing documents on the intent requirement. HUD has consistently held that intent is established by the totality of the facts. HUD is also aware that prior to the adoption of protection for families with children in the Fair Housing Amendments Act, housing communities and facilities had established senior housing at an age other than 55 with a prohibition against amending the covenants for a period of 25 years or more. It would be unjust to deny such housing qualification for the exemption when it meets the intent requirement in all other ways as well as meeting the other requirements for the exemption and has done what it can to eliminate language inconsistent with the exemption for housing for persons 55 years of age or older. HUD notes, however, that in circumstances where the community holds itself out as ''adult'' and its legal documents describe occupancy in terms which are not consistent with the 55-and-older exemption and no action has been taken to attempt to change the applicable documents, the requisite intent requirement is not met.

Other commenters have interpreted this provision as sanctioning senior housing under federal law when state and local law prohibits or restricts the establishment of senior housing in the particular circumstances of that community. HUD has always allowed state or local laws which impose requirements in addition to, but not inconsistent with, those in the Act to apply. Moreover, to the extent that state or local law interpretations require additional or different standards, the Act's provisions must still be met to qualify for the exemption. HUD urges senior communities to consult state or local units of government to ensure that the housing community is also in compliance with all applicable state and local requirements governing senior housing.

Several commenters addressed specific actions of communities purporting to be senior housing. These include such matters as requirements that occupants join a homeowners association (HOA) or whether a community must allow an under-aged heir to reside in the community or the grandchild of a resident. None of these matters are directly affected by the rule. These types of issues are governed by private contractual agreements and local laws and practice. If there is no independent law, deed restriction or other legally enforceable requirement that an individual join a HOA, it is not required by HOPA. Additionally, although HOPA would allow under-aged heirs, or minors under the age of 18 years of age to reside in, or visit, housing for persons who are 55 years of age or older, it does not require it. HUD philosophically supports a compassionate community which has provisions allowing some flexibility where the exemption would not be destroyed by that flexibility, but there is no direct legal authority under the Act to require it.

There continues to be confusion concerning what is often referred to as the 80/20 split. HOPA states that the minimum standard to obtain housing for persons who are 55 years of age or older status is that ''at least 80%'' of the occupied units be occupied by persons 55 years or older. There is no requirement that the remaining 20% of the occupied units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years of age or older. Communities may decline to permit any persons under the age of 55, may require that 100% of the units have at least one occupant who is 55 years of age or older, may permit up to 20% of the occupied units to be occupied by persons who are younger than 55 years of age, or set whatever requirements they wish, as long as ''at least 80%'' of the occupied units are occupied by one person 55 years of age or older, and so long as such requirements are not inconsistent with the overall intent to be housing for older persons.

The final regulation retains the provision that a unit occupied by a person or persons as a reasonable accommodation to the disability of an occupant need not be counted in meeting the 80% requirements. This provision ensures that a community or facility seeking to authorize the reasonable accommodation for a resident who, because of a disability, requires an attendant, including family members under the age of 18, residing in a unit in order for that person to benefit from the housing will not have its exemption adversely affected by permitting the accommodation. The authority for this provision arises under the Act's requirement that reasonable accommodations be provided to persons with disabilities.

Although occupancy by a person under the age of 55 who inherits a unit or a surviving spouse who is younger than 55 years of age are the original examples cited by Congress in justifying the original 80/20 split, HUD does not consider these to be the only appropriate uses of the flexibility provided by the up to 20% allowed by the exemption, nor are protections for those groups required. HUD believes that the appropriate use of the 20%, if any, is at the discretion of the community or facility and does not intend to impose more specific requirements in this area. For example, a community could allow some percentage of its units, up to 20%, to be made available to persons over the age of *50,* and, as long as the overall intent to be senior housing remained clear, HUD would not have an objection. However, the remaining portion of units not counted for purposes of meeting the 80% requirement may not be segregated within a community or facility.

Some commenters offered opinions concerning the proper nomenclature for senior communities and the consequences of using the ''wrong'' term. HUD believes that the best practice is to refer to such housing as ''Senior Housing'' or ''A 55 and older community'' or ''retirement community,'' and discourages the use of the terms ''adult housing'' or similar language. While use of adult housing or similar phrases, standing alone, do not destroy the intent requirement of HOPA, they send a clear message which is inconsistent with the intent to be housing for older persons. If a community or facility has clearly shown its intent in other ways, and meets the 80% requirement, then the intent requirement has been met even if the phrase ''adult'' or similar terminology is occasionally used. However, a community which describes itself as ''adult'' leaves itself vulnerable to complaints about its eligibility for the exemption, which could result in an investigation or litigation to determine whether the community in fact qualifies for the exemption.

Other questions on the intent requirement concerned whether HUD intended to require that all of the items in § 100.306 be provided and whether the examples of compliance with the intent requirement were mandatory. HUD does not intend to impose any rigid requirements on indicating intent. Section 100.306 only speaks to relevant factors to be considered and the examples simply illustrate what could satisfy the requirement. Intent is judged based on the common understanding of the word and whether the community or facility has established through various means whether they intend to operate housing for persons who are 55 years of age or older.

Other commenters objected to the inclusion of a ''municipally zoned area'' as a possible type of housing for persons who are 55 years of age or older, while others questioned the use of the terminology of ''mobile home park'' instead of ''manufactured housing''. When former Assistant Secretary Roberta Achtenberg conducted public hearings on the ''55 and over'' rule, HUD learned that there are a large variety of senior housing communities, organized and administered in various ways. HUD attempted to define the possibilities as broadly as possible to include any type of housing which could qualify for the exemption.

On the issue of age verification, commenters had several diverse suggestions. Several commenters urged that only the individual resident should be able to attest to his or her age and that anyone not cooperating with the survey should be considered to be not 55 years or older. It is HUD's position that the test is whether 80% of the occupied units are, in fact, occupied by persons 55 years or older. This need only be documented through reliable survey, census or affidavit, or other documentation, a copy of which should be retained for recordkeeping purposes, and which confirms that the 80% threshold is being met. A self certification of his or her age by an individual will be adequate to meet this standard. An affidavit from someone who knows the age of the occupant(s) and states his/her basis for the knowledge is sufficiently reliable to satisfy the statute. To hold otherwise would effectively allow 21% of a senior community to destroy the exemption by not cooperating with verification procedures.

Other comments concerning verification were that the use of immigration documents should be removed from the list of possible sources of age verification lest it encourage discrimination against legal immigrants. The option remains in the rule since it is only one way of verifying age. HUD does not intend to require any particular documentation be provided as a condition of occupancy, including immigration documentation. If any individual chooses to verify by providing a drivers license or affidavit instead of an immigration document, the verification requirement will be satisfied. A summary of the information gathered in support of the occupancy verification should be retained for confirmation purposes. Copies of supporting information gathered in support of the occupancy verification may be retained in a separate file with limited access, created for the sole purpose of complying with HOPA, and not in general or resident files that may be widely accessible to employees or other residents. The segregated documents may be considered confidential and not generally available for public inspection. HUD, state or local fair housing enforcement agencies, or the Department of Justice may review this documentation during the course of an investigation.

Other commenters questioned the reference to a ''census'' as a source of verification, noting that the census does not specify individual names but

instead deals with ''census tracts'' and is often outdated. This is a misunderstanding of HUD's view. HUD was not referring to the United States Decennial Census for verification of occupancy. The reference is to household censuses which are conducted by many cities and towns. The language has been clarified.

Some commenters objected to the ''re-survey'' of the park every two years as being unduly burdensome, especially if the list is actively updated on an on-going basis. While HUD is sympathetic to those well-managed communities which actively update lists of residents, it does not feel that such communities would be unduly burdened by the update since the information required will be readily available in the files. HUD's experience in this area gives it reason to believe that if surveys are not required to be updated periodically the quality of the recordkeeping will deteriorate and create the opportunity for the excessive litigation Congress sought to prevent. The re-survey does not require that all supporting documents be collected again—only that the community confirm that those persons counted as occupying dwellings for purposes of meeting the 80% requirement are, in fact, still in occupancy.

There were objections to making public information contained in an age survey for fear that confidential information may be obtained by someone attempting to prey on seniors. HUD believes that this is a misinterpretation of the requirement. Only the overall survey summary is required to be available for review, not the supporting documentation. The word ''summary'' has been added to this section.

Some commenters felt that any affidavit should be signed under the penalty of perjury to ensure the integrity of the process. Communities which are concerned about misrepresentation of the age of occupants are free to require that affidavits from occupants about the ages of persons in their households be signed under the penalty of perjury, just as they are free, consistent with state or local law, to require that applications, leases, and other admission documents be signed under oath, or under penalty of perjury. Statements from third party individuals who have personal knowledge of the age of the occupants and setting forth the basis for such knowledge may be used when occupants decline to provide information verifying age, but such statements must be made under penalty of perjury.

There were three comments concerning the ''good faith reliance'' exemption from monetary damages. The first questioned whether the exemption covered just housing for persons who are 55 years of age or older or all senior housing exemptions. A review of the language of HOPA indicates the language is applicable whenever the housing for older persons exemption may be claimed. The language has been adjusted accordingly. The second comment concerned whether the term ''person'' covered only ''natural persons'' or whether it included business and corporate entities. HUD believes Congress intended the ''good faith reliance defense'' to be applicable only to natural persons. The legislative history of the provision indicates that Congress intended to protect individual persons, such as individual members of boards of governing homeowners associations and real estate agents relying on information provided to them by operators of senior communities, in enacting this provision. House Report 104–91, at 10, describes this portion of the amendment as being designed to allow a person engaged in the business of residential real estate to show ''good faith reliance'' unless the person has actual knowledge that a facility or community is *not* eligible for the exemption and describes individual real estate agents as requiring protection in this area. This language indicates that it is natural persons which Congress wished to protect from damages awards in these circumstances.

To the extent that this interpretation may cause concern for corporate publishers which may accept a notice describing a facility or community as senior housing based on the representations of others and without personal knowledge of the actual qualifications for eligibility, HUD has already interpreted section 804(c) of the Act to exclude from liability those entities which publish advertisements regarding senior housing in good faith reliance on the assertions of others. To the extent that there is further publication based on a natural person's good faith reliance on a certification of eligibility for an exemption, HUD foresees no grounds for further liability. In other words, where the source of the information is a natural person who has the written certification described in the final regulation and further publication is based on that information, in the absence of actual knowledge that a particular community or facility is *not* eligible for the exemption, there is no liability for that publication.

The third issue identified by commenters deals with whether a claim of ''good faith'' requires actual knowledge that the community had certified in writing that it was housing for persons who are 55 years of age or older. A review of the language of the Committee report indicates that the eligibility for the claim of ''good faith'' relies on the fact that the facility or community ''has certified to that person, in writing and on oath or affirmation, that it complies with the requirements'' for the exemption. (House Report 104–91 at 10) Therefore, actual knowledge of the certification is required. *Other:* It has become clear that there is confusion about the extent to which the provisions of the Fair Housing Act relating to the housing for older persons exemptions affect statutory eligibility requirements for participation in federally funded housing programs. Neither HOPA nor the Act change the definition of ''elderly family'' which mandates that a family include the situation where the head, spouse or sole member is age 62 or older. Neither HOPA nor the Act permit a HUD-funded public housing provider to designate a project as being for the elderly without HUD review and approval, even if the project would meet the housing for older persons exemption under the Act. Similarly, HUD-funded housing which is designated for the elderly may not admit households which are not statutorily eligible for the housing (such as limiting admissions to those who are 55 years of age or older rather than the near elderly). Finally, no public housing development funded by HUD may exclude families with children, even if at least 80% of the units are occupied by at least one person who is 55 years of age or older.

II. Findings and Certifications

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. OMB determined that this final rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled **ADDRESS.**

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the Department's regulations published in a final rule on September 27, 1996 (61 FR 50914), the policy set

forth in this final rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the authorities cited in 24 CFR 50.4.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements the requirements of HOPA by revising the provisions for ''55-or-older'' housing found at 24 CFR part 100, subpart E. It effects no changes in the current relationships among the Federal government, the States and their political subdivisions in connection with HUD programs.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule updates HUD's regulations implementing the ''housing for older persons'' exemption to the Fair Housing Act. Specifically, the rule implements the statutory amendments made by HOPA. These revisions provide housing facilities and communities with a better understanding of what housing qualifies for the ''55-or-older'' exemption to the Fair Housing Act's prohibitions against discrimination on the basis of familial status. The final rule will not have any meaningful impact on small entities.

List of Subjects in 24 CFR part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100 is amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Subpart E is amended by revising § 100.304 and by adding §§ 100.305, 100.306, 100.307, and 100.308, to read as follows:

Subpart E—Housing for Older Persons

* * * * *

§ 100.304 Housing for persons who are 55 years of age or older.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, *housing facility or community* means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

(1) A condominium association;

(2) A cooperative;

(3) A property governed by a homeowners' or resident association;

(4) A municipally zoned area;

(5) A leased property under common private ownership;

(6) A mobile home park; and

(7) A manufactured housing community.

(c) For purposes of this subpart, *older person* means a person 55 years of age or older.

§ 100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as housing for older persons under § 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, *occupied unit* means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, *occupied by at least one person 55 years of age or older* means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(i) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of §§ 100.304, 100.306, and 100.307.

(f) For purposes of the transition provision described in § 100.305(e)(5), a housing facility or community may not evict, refuse to renew leases, or

otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

(g) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of § 100.306.

§ 100.306 Intent to operate as housing designed for persons who are 55 years of age or older.

(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) Phrases such as ''adult living'', ''adult community'', or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of §§ 100.305 and 100.306(a).

(Approved by the Office of Management and Budget under control number 2529–0046)

§ 100.307 Verification of occupancy.

(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license;

(2) Birth certificate;

(3) Passport;

(4) Immigration card;

(5) Military identification;

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

(7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

(1) Government records or documents, such as a local household census;

(2) Prior forms or applications; or

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

(Approved by the Office of Management and Budget under control number 2529–0046)

§ 100.308 Good faith defense against civil money damages.

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this subpart.

(b)(1) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

(2) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.

(3) For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

(4) For purposes of this section, a person means a natural person.

(5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

Dated: March 25, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

Note: This Appendix will not be Codified in Title 24 of the CFR.

Appendix

Examples of Applications of HUD'S Regulations Governing the Exemption for Housing for Persons 55 Years of Age or Older to the Fair Housing Act

Sections

1. Purpose.
2. 80 percent occupancy.
3. Intent to operate as housing for persons who are 55 years of age or older.
4. Verification of occupancy.
5. Future revisions to this appendix.

1. Purpose.

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) (the Act) exempts ''housing for older persons'' from the prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older that satisfies certain criteria. HUD has implemented the ''housing for older persons'' exemption at 24 CFR part 100, subpart E. Specifically, §§ 100.304, 100.305, 100.306, and 100.307 set forth the requirements for housing seeking to qualify for the exemption. The purpose of this appendix is to provide guidance to housing facilities or communities in applying these HUD requirements.

2. 80 Percent Occupancy.

Section 100.305 provides that in order for a housing facility or community to qualify for the exemption, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older. This occupancy requirement must be met at the time of any alleged violation of the Act. Paragraph (f) of § 100.305 states that where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

Example: A community or facility contains 63 occupied units. Eighty percent of 63 units equals 50.4. Under § 100.305(d), 51 units would require occupancy by at least one person 55 years of age or older to qualify as 55 and older housing.

Section 100.305 also sets forth the other requirements a housing facility or community must follow in calculating occupancy. The following examples illustrate these requirements:

Example 1:

Buena Vista is a condominium association of 120 units. On September 13, 1988, twenty (20) of the occupied units are not occupied by at least one person 55 years of age or older.

On April 1, 1998, Buena Vista declares itself to be housing for persons 55 years of age or older. On that date:

(1) The twenty (20) persons described above are still residing at Buena Vista;

(2) Ten (10) units of the total 120 units are unoccupied;

(3) One (1) of the units is occupied by the association's maintenance supervisor; and

(4) Two (2) units are occupied only by live-in health aides who provide reasonable accommodations to residents with disabilities and who are under the age of 55.

How many of the occupied units must be occupied by at least one person 55 years of age or older in order for Buena Vista to qualify as 55-or-older housing?

Under § 100.305(e), Buena Vista would calculate its compliance with the 80 percent occupancy requirement by subtracting the following units from the total 120 units:

(1) The 20 units not occupied by at least one person 55 years of age or older on September 13, 1988 (See § 100.305(e)(1));

(2) The ten (10) unoccupied units (See § 100.305(e)(2));

(3) The one (1) unit occupied by the maintenance person (See § 100.305(e)(3)); and

(4) The two (2) units occupied by the health aides (See 42 U.S.C. 3607 (b)(3)(A) and 42 § 100.305(e)(4)).

Subtracting these 33 units from the total of 120 units leaves 87 units. At least 80 percent of these 87 units must be occupied by at least one person 55 years of age or older. Eighty percent of 87 equals 69.6. Due to § 100.305(d), 70 units must be occupied by at least one person 55 years of age or older. This example assumes that the community also meets the requirements of §§ 100.306 and 100.307.

Example 2:

Topaz House is a cooperative of 100 units. On January 20, 1998, Topaz House announces its intent to be 55-or-older housing and publishes policies and procedures sufficient to satisfy § 100.306. On that date, of the 100 total units:

(1) Sixty (60) of the occupied units are occupied by at least one person 55 years of age or older;

(2) Thirty (30) of the occupied units do not have occupants 55 years of age or older; and

(3) Ten (10) units are unoccupied.

Since 60 out of the 90 occupied units are occupied by at least one person 55 years of age or older, the Topaz House only has 67 percent of its occupied units occupied by at least one person 55 years of age or older.

Under § 100.305(e)(5), Topaz House may still qualify for the 55-or-older exemption if, during a period which is one year from the effective date of this regulation, it:

(1) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(2) Meets the requirements of §§ 100.304, 100.305, 100.306, and 100.307 and

(3) Within the one year period achieves occupancy of at least 80% of its occupied units by at least one person who is 55 years of age or older.

There is no requirement that Topaz House take any action concerning the residents under 55 years of age who are occupying units on the date the building declares its intent to be 55-or-older housing. Topaz may not evict, or terminate the leases of households containing children under the age of 18, in order to qualify for the exemption.

Example 3:

Snowbird City is a mobile home community in Texas with 100 units. Snowbird City complies with all other requirements of 55-or-older housing, but is uncertain of its compliance with the 80 percent occupancy rule.

Fifty out of the 100 units are occupied year round. Of these fifty units, 12 units are not occupied by at least one person 55 years of age or older. Of the remaining 50 units, 5 are unoccupied and offered for sale, and the remaining 45 are occupied by at least one person 55 years of age or older each winter on a routine and reoccurring basis.

If a complaint of familial status discrimination is filed in December, the community meets the 80 percent occupancy requirement because 83 out of the 95 occupied units (87 percent), are occupied by at least one person 55 years of age or older. If the complaint is filed in July, Snowbird City still meets the requirement. Under § 100.305(b), a temporarily vacant unit is considered occupied by a person 55 years of age or older if:

(1) The primary occupant has resided in the unit during the past year; and

(2) The occupant intends to return on a periodic basis.

Example 4:

The King Philip Senior Community is a newly renovated building originally built in 1952. It has been vacant for over one year while extensive renovations were completed. The building contains 200 units. The King Philip Senior Community is intended to be operated as a 55-or-older community.

Under § 100.305(d), newly constructed housing need not comply with the 80 percent occupancy requirement until 25 percent of the total units are occupied. For purposes of § 100.305(d), newly constructed housing includes housing that has been unoccupied for at least 90 days due to renovation or rehabilitation. Accordingly, the King Philip Senior Community need not comply with the 80 percent occupancy requirement until 50 out of its 200 units (25 percent) are occupied. Subsequent to occupancy of the 50th unit, however, the building will have to satisfy the 80 percent occupancy rule in order to qualify as 55-or-older housing.

3. Intent to operate as housing for persons who are 55 years of age or older.

Section 100.306 provides that in order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. Section 100.306 also details the factors HUD will utilize to determine whether a housing facility or community has met this intent requirement. The following are examples of housing facilities and communities which satisfy the intent requirement described in § 100.306:

Example 1:

A mobile home park which takes the following actions satisfies the intent requirement:

(1) Posts a sign indicating that the park is 55-or-older housing;

(2) Includes lease provisions stating that the park intends to operate as 55-or-older housing; and

(3) Has provided local realtors with copies of the lease provisions.

Example 2:

An area zoned by a unit of local government as ''senior housing'' satisfies the intent requirement if:

(1) Zoning maps containing the ''senior housing'' designation are available to the public;

(2) Literature distributed by the area describes it as ''senior housing'';

(3) The ''senior housing'' designation is recorded in accordance with local property recording statutes; and

(4) Zoning requirements include the 55-or-older requirement or a similar provision.

Example 3:

A condominium association satisfies the intent requirement if it has:

(1) Adopted, through its rules and regulations, restrictions on the occupancy of units consistent with HUD's regulations governing 55-or-older housing at 24 CFR part 100, subpart E;

(2) Has distributed copies of the rules to all occupants; and

(3) Has notified local realtors of the restrictions.

The following is an example of a housing facility which has failed to satisfy the intent requirement described in § 100.306:

Example 4:

A homeowners association has failed to meet the intent requirement if it has Covenants, Conditions and Restrictions which refer to an ''adult community,'' has posted a sign stating ''A 40 and over community'' and has restricted visiting children to a maximum of two weeks, but contains no similar restriction for visiting adults.

4. Verification of occupancy.

Section 100.307 provides that in order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a complaint alleging a violation of the Act, verification of compliance with § 100.305 through reliable surveys and affidavits. Paragraph (d)(7) of § 100.307 includes self-certifications in a list of documents considered reliable documentation of the age of occupants. The self-certification may be included in a lease or other document, and must be signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older. The following examples provide acceptable provisions to demonstrate a self-certification process:

Example 1:

All new leases, new purchase agreements, or new applications contain a provision directly above the signatory line for lessees, asserting that at least one occupant of the dwelling will be 55 years of age or older. In addition, the community surveys all current residents for their occupancy status in compliance with the 55-or-older requirements.

Example 2: *Sample certification*

I, (name), am 18 years of age or older and a member of the household that resides at (housing facility or community), (unit number or designation). I hereby certify that I have personal knowledge of the ages of the occupants of this household and that at least one occupant is 55 years of age or older.

Paragraph (e) of § 100.307 requires that the housing facility or community establish appropriate policies to require that all occupants comply with the age verification procedures. The following examples illustrate acceptable policies:

Example 1:

A condominium association establishes a rule that the board of directors must approve all new occupants. One criteria for approval is that new occupants of each unit inform the condominium association whether at least one person occupying the unit is 55 years of age or older.

Example 2:

A homeowners association amends its Covenants, Conditions and Restrictions, and records them at the appropriate government recording office. The amendments require applicants to state whether at least one occupant is 55 years of age or older.

Example 3:

The owner of a mobile home park where the residents own the coach but rent the land requires a statement of whether at least one occupant is 55 years of age or older before any sublease or new rental.

5. Future revisions to this appendix.

HUD may update or revise this appendix as necessary.

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