§ 847.5 Offering records in evidence.

(a) Do not offer official Air Force records physically into evidence unless they can be withdrawn and a copy substituted for the original. Copies of Air Force records, authenticated as provided in this part, are admissible in evidence instead of the records themselves. Copies must be used in those proceedings which do not permit the substitution of reproductions of the original documents admitted into evidence.

(b) If the custodian of official Air Force records certifies that after diligent search no record or entry of a specified matter exists in the records of his office, that certificate is admissible as evidence of such fact. The custodian prepares the first certificate on AF Form 44, stating that, after diligent search, no record or entry of a specified matter exists in the records of his office. The AF Form 44 is then forwarded for completion as provided in § 847.4(a).

SUBCHAPTER F—AIRCRAFT

Part 856 is revised to read as follows:

PART 856—AIRCRAFT ARRESTING SYSTEMS

Sec.
856.1 Purpose.
856.2 System and use.
856.3 Policy on systems authorized.
856.4 Overall policy on use of systems.
856.5 Use of systems by non-U.S. Government aircraft.
856.6 Responsibility of the pilot.
856.7 Liability agreement.
856.8 FAA operational agreement.

AUTHORITY: The provisions of this Part 856 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

SOURCE: AFR 55-42, August 4, 1966.

§ 856.1 Purpose.

This part explains what aircraft arresting systems are, systems authorized, how they are installed, operated, and used at Air Force installations and joint-use civil airports, what pilot responsibilities are, and how to prepare liability and operation agreements with the FAA.

§ 856.2 System and use.

The aircraft arresting system is designed primarily to stop in an emergency jet aircraft having an arresting capability. It consists of a method of engagement and an energy absorber. The nylon webbing barrier net activated cable, BAK-11 "Pop Up Device" and arrester hook which engages a supported, elevated cable across the runway are examples of methods of engagement. Energy absorbers are the MA-1/MA-1A anchor chain, BAK-6 "Water Squeezer" and the BAK-9 and BAK-12 "Rotary Friction Brake."

§ 856.3 Policy on systems authorized.

Normally an aircraft arresting system will be provided for the main instrument runway only. At bases where the primary mission involves pilot training or transition, an additional system is authorized for the secondary runways.

§ 856.4 Overall policy on use of systems.

(a) Jet aircraft with an arresting capability will land and take off toward a compatible available arresting system during normal operations. Operational conditions, such as crosswinds, safety of flight, or peculiar operation conditions may justify exception to this policy.

(b) Hook-equipped aircraft will take off and land toward an elevated cross-runway cable or BAK-11; other aircraft toward a raised nylon barrier net or BAK-11. Additionally:

(1) If the nylon barrier net and elevated cable and/or BAK-11 are installed and the barrier net can be remotely controlled from the tower, the barrier net should be lowered for tail hook-equipped aircraft. However, to provide maximum compatibility with mission requirements—and at the option of the commander after his evaluation of all safety considerations—barrier nets may be raised or lowered for hook-equipped aircraft. Those barrier nets which cannot be remotely controlled from the tower may be left up for hook-equipped aircraft.

(2) If the MA-1/MA-1A barrier equipped only with the barrier net is installed, the net will be raised for hook-equipped aircraft and the arrester hook deployed before engagement. NOTE: B-57 and T-37 aircraft are not compatible with the MA-1/MA-1A barrier net and should not engage the raised barrier net.

§ 856.5 Use of systems by non-U.S. Government aircraft.

In an emergency, pilots of non-Government aircraft may, upon request, use arresting systems installed by the Air Force at Air Force or joint-use airfields in the United States or overseas. However, the Air Force accepts no liability for damage resulting from attempted engagements by such aircraft.

§ 856.6 Responsibility of the pilot.

Pilots using arresting systems must be thoroughly familiar with the capabilities and limitations of the various systems installed. The Technical Order 35E8 series contain specific data on these systems. The pilot must understand the following general information, which is neither all inclusive nor a substitute for detailed study of the appropriate TOs:

(a) He will request that the MA-1/MA-1A net type barrier be lowered during "gear up" landings.

(b) He will request the desired barrier position prior to takeoff and before changing from tower or ground control to departure frequency.

(c) He will use the standard emergency radio phraseology, "Barrier, Barrier, Barrier" when emergency conditions require raising the net.

(d) He must be aware of the effect of various aircraft configurations on the probability of a successful engagement, such as speed, weight, external stores, dive brakes, flaps, and tail hooks.

§ 856.7 Liability agreement.

When the Air Force installs an aircraft arresting system on joint-use civil airports for the primary use of U.S. military aircraft, the FAA acts for, and on behalf of, the Air Force in operating this equipment. Any third-party claim presented for damage, injury, or death, resulting from FAA operation of the system, or from Air Force or Air National Guard maintenance thereof, is the responsibility of the Air Force and is processed the same as any other claim against the Air Force. (See AFM 112-1 (Claims Manual).) This policy does not apply to an incident arising in connection with the intentional operation of the equipment by FAA personnel for civil aircraft since such claims are the responsibility of that agency. Therefore, a separate agreement between the Air Force and the FAA concerning such damage at each joint-use civil airport is not required.

§ 856.8 FAA operational agreement.

(a) MA-1A aircraft arresting barriers are operated by remote control by FAA air traffic controllers at joint-use airports where the control tower is manned by FAA personnel. Hence, there must be a written agreement describing FAA functions and responsibility.

(b) Each major commander is authorized to enter into an agreement with the FAA for operating MA-1A aircraft arresting systems at joint-use airports. He may redelegate this authority to the base commander.

SUBCHAPTER H—AIR FORCE RESERVE OFFICERS' TRAINING CORPS

Part 871 is corrected as follows:

PART 871—DEFERMENT OF AIR FORCE ROTC CADETS

In F.R. Doc. 66-13116, appearing at 31 F.R. 15318, December 7, 1966, the heading for Part 871 is corrected to read as above.

By order of the Secretary of the Air Force.

LUCIAN M. FERGUSON,
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 67-533; Filed, Jan. 17, 1967; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 101-43—UTILIZATION OF PERSONAL PROPERTY

Informational Material and Forms

Sections 101-43.311-1 and 101-43.315-5 are revised to require that when any item of equipment is reported as excess, all available manuals, diagrams, and instructional or informational material pertaining thereto shall be reported and transferred with the equipment. Sec-

tions 101–43.4900 and 101–43.4904 are revised to state where forms illustrated in Subpart 101–43.49 may be obtained, and to transmit a revised GSA Form 1539, Request for Excess Personal Property. The revised form provides spaces for the name and phone number of the person to be contacted by GSA, and the Federal Stock Number, if available.

Subpart 101–43.3—Utilization of Excess

Subpart 101–43.3 is amended by revising § 101–43.311–1 and by adding a new paragraph to § 101–43.315–5 as follows:

§ 101–43.311–1 Reporting.

Except as set forth in § 101–43.312, excess personal property shall be reported promptly as provided in this § 101–43.311–1 and in accordance with the Federal Supply Classification Groups and Classes contained in § 101–43.4901. Full descriptions will be used, when available. In the absence of such descriptions, adequate commercial descriptions will be furnished. Whenever possible, Federal stock numbers should be provided as part of the description. It is especially important that the excess property report reflect the true condition of the property as of the date it is reported excess, through assignment of the appropriate code designation, as defined in § 101–43.4902–1. Further, whenever an item of equipment is reported as excess on Standard Form 120, Report of Excess Personal Property, any available operating manual, parts list, circuit or wiring diagram, maintenance record, log, or other instructional or informational publication or brochure pertaining to the equipment shall be reported on the Standard Form 120.

§ 101–43.315–5 Procedure for effecting transfers.

* * * * *

(i) Whenever an excess item of equipment is transferred, any available operating manual, parts list, circuit or wiring diagram, maintenance record, log, or other instructional or informational publication or brochure pertaining to the equipment shall accompany and be transferred with the item of equipment.

Subpart 101–43.49—Illustrations

Subpart 101–43.49 is amended by revising §§ 101–43.4900 and 101–43.4904 as follows:

§ 101–43.4900 Scope of subpart.

This subpart prescribes lists and forms applicable in connection with the utilization of personal property. GSA forms may be obtained from the appropriate General Services Administration regional office, Regional Property Management and Disposal Service. Standard forms may be obtained from the nearest GSA supply depot.

§ 101–43.4904 GSA Form 1539, Request for Excess Personal Property.

NOTE: The form in § 101–43.4904 is filed as a part of the original document. Copies may be obtained from the appropriate General Services Administration regional office, Regional Property Management and Disposal Service.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER.

Dated: January 10, 1967.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 67–572; Filed, Jan. 17, 1967; 8:47 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER D—GRANTS

PART 54—GRANTS FOR SPECIALIZED SERVICE FACILITIES

Subpart E—Grants for Regional Medical Programs

On March 25, 1966, a notice of rule making was published in the FEDERAL REGISTER (31 F.R. 4969) proposing the adoption of new regulations relating to grants for the support of regional medical programs. The notice provided a period of 30 days for receipt of data, views, and arguments.

After consideration of the comments submitted and appropriate modification, effective immediately upon publication in the FEDERAL REGISTER, Title 42, Chapter I, Subchapter D, Part 54, is amended by adding a new Subpart E to read as follows:

Subpart E—Grants for Regional Medical Programs

Sec.
54.401 Applicability.
54.402 Definitions.
54.403 Eligibility.
54.404 Application.
54.405 Terms, conditions, and assurances.
54.406 Award.
54.407 Termination.
54.408 Nondiscrimination.
54.409 Expenditures by grantee.
54.410 Payments.
54.411 Different use or transfer; good cause for other use.
54.412 Publications.
54.413 Copyrights.
54.414 Interest.

AUTHORITY: The provisions of this Subpart E issued under sec. 215, 58 Stat. 690, sec. 906, 79 Stat. 930; 42 U.S.C. 216, 299f. Interpret or apply secs. 900, 901, 902, 903, 904, 905, 909, 79 Stat. 926, 927, 928, 929, 930, 42 U.S.C. 299, 299a, 299b, 299c, 299d, 299e, 299f.

§ 54.401 Applicability.

The provisions of this subpart apply to grants for planning, establishment, and operation of regional medical programs as authorized by Title IX of the Public Health Service Act, as amended by Public Law 89–239.

§ 54.402 Definitions.

(a) All terms not defined herein shall have the meaning given them in the Act.

(b) "Act" means the Public Health Service Act, as amended.

(c) "Title IX" means Title IX of the Public Health Service Act, as amended.

(d) "Related diseases" means those diseases which can reasonably be considered to bear a direct relationship to heart disease, cancer, or stroke.

(e) "Title IX diseases" means heart disease, cancer, stroke, and related diseases.

(f) "Program" means the regional medical program as defined in section 902(a) of the Act.

(g) "Practicing physician" means any physician licensed to practice medicine in accordance with applicable State laws and currently engaged in the diagnosis or treatment of patients.

(h) "Major repair" includes restoration of an existing building to a sound state.

(i) "Built-in equipment" is equipment affixed to the facility and customarily included in the construction contract.

(j) "Advisory group" means the group designated pursuant to section 903(b)(4) of the Act.

(k) "Geographic area" means any area that the Surgeon General determines forms an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of growth; location and extent of transportation and communication facilities and systems; presence and distribution of educational, medical and health facilities and programs, and other activities which in the opinion of the Surgeon General are appropriate for carrying out the purposes of Title IX.

§ 54.403 Eligibility.

In order to be eligible for a grant, the applicant shall:

(a) Meet the requirements of section 903 or 904 of the Act;

(b) Be located in a State;

(c) Be situated within a geographic area appropriate under the provisions of this subpart for carrying out the purposes of the Act.

§ 54.404 Application.

(a) *Forms.* An application for a grant shall be submitted on such forms and in such manner as the Surgeon General may prescribe.

(b) *Execution.* The application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant all of the obligations specified in the terms and conditions of the grant including those contained in these regulations.

(c) *Description of program.* In addition to any other pertinent information that the Surgeon General may require, the applicant shall submit a description of the program in sufficient detail to clearly identify the nature, need, purpose, plan, and methods of the program, the nature and functions of the participating institutions, the geographic area to be served, the cooperative arrangements in effect, or intended to be made effective, within the group, the justification supported by a budget or other data, for the amount of the funds requested, and financial or other data demonstrat-

ing that grant funds will not supplant funds otherwise available for establishment or operation of the regional medical program.

(d) *Advisory group; establishment; evidence.* An application for a grant under section 903 of the Act shall contain or be supported by documentary evidence of the establishment of an advisory group to provide advice in formulating and carrying out the establishment and operation of a program.

(e) *Advisory group; membership; description.* The application or supporting material shall describe the selection and membership of the designated advisory group, showing the extent of inclusion in such group of practicing physicians, members of other health professions, medical center officials, hospital administrators, representatives from appropriate medical societies, voluntary agencies, representatives of other organizations, institutions and agencies concerned with activities of the kind to be carried on under the program, and members of the public familiar with the need for the services provided under the program.

(f) *Construction; purposes, plans, and specifications; narrative description.* With respect to an application for funds to be used in whole or part for construction as defined in Title IX, the applicant shall furnish in sufficient detail plans and specifications as well as a narrative description, to indicate the need, nature, and purpose of the proposed construction.

(g) *Advisory group; recommendation.* An application for a grant under section 904 of the Act shall contain or be supported by a copy of the written recommendation of the advisory group.

§ 54.405 Terms, conditions, and assurances.

In addition to any other terms, conditions, and assurances required by law or imposed by the Surgeon General, each grant shall be subject to the following terms, conditions, and assurances to be furnished by the grantee. The Surgeon General may at any time approve exceptions where he finds that such exceptions are not inconsistent with the Act and the purposes of the program.

(a) *Use of funds.* The grantee will use grant funds solely for the purposes for which the grant was made, as set forth in the approved application and award statement. In the event any part of the amount paid a grantee is found by the Surgeon General to have been expended for purposes or by any methods contrary to the Act, the regulations of this subpart, or contrary to any condition to the award, then such grantee, upon being notified of such finding, and in addition to any other requirement, shall pay an equal amount to the United States. Changes in grant purposes may be made only in accordance with procedures established by the Surgeon General.

(b) *Obligation of funds.* No funds may be charged against the grant for services performed or material or equipment delivered, pursuant to a contract or agreement entered into by the applicant prior to the effective date of the grant.

(c) *Inventions or discoveries.* Any grant award hereunder in whole or in part for research is subject to the regulations of the Department of Health, Education, and Welfare as set forth in Parts 6 and 8 of Title 45, as amended. Such regulations shall apply to any program activity for which grant funds are in fact used whether within the scope of the program as approved or otherwise. Appropriate measures shall be taken by the grantee and by the Surgeon General to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligation. Laboratory notes, related technical data, and information pertaining to inventions or discoveries made through activities supported by grant funds shall be maintained for such periods, and filed with or otherwise made available to the Surgeon General or those he may designate at such times and in such manner as he may determine necessary to carry out such Department regulations.

(d) *Reports.* The grantee shall maintain and file with the Surgeon General such progress, fiscal, and other reports, including reports of meetings of the advisory group convened before and after award of a grant under section 904 of the Act, as the Surgeon General may prescribe.

(e) *Records retention.* All construction, financial, and other records relating to the use of grant funds shall be retained until the grantee has received written notice that the records have been audited unless a different period is permitted or required in writing by the Surgeon General.

(f) *Responsible official.* The official designated in the application as responsible for the coordination of the program shall continue to be responsible for the duration of the period for which grant funds are made available. The grantee shall notify the Surgeon General immediately if such official becomes unavailable to discharge this responsibility. The Surgeon General may terminate the grant whenever such official shall become thus unavailable unless the grantee replaces such official with another official found by the Surgeon General to be qualified.

§ 54.406 Award.

Upon recommendation of the National Advisory Council on Regional Medical Programs, and within the limits of available funds, the Surgeon General shall award a grant to those applicants whose approved programs will in his judgment best promote the purposes of Title IX. In awarding grants, the Surgeon General shall take into consideration, among other relevant factors, the following:

(a) Generally, the extent to which the proposed program will carry out, through regional cooperation, the purposes of Title IX, within a geographic area.

(b) The capacity of the institutions or agencies within the program, individually and collectively, for research, training, and demonstration activities with respect to Title IX.

(c) The extent to which the applicant or the participants in the program plan to coordinate or have coordinated the regional medical program with other activities supported pursuant to the authority contained in the Public Health Service Act and other Acts of Congress including those relating to planning and use of facilities, personnel, and equipment, and training of manpower.

(d) The population to be served by the regional medical program and relationships to adjacent or other regional medical programs.

(e) The extent to which all the health resources of the region have been taken into consideration in the planning and/or establishment of the program.

(f) The extent to which the participating institutions will utilize existing resources and will continue to seek additional nonfederal resources for carrying out the objectives of the regional medical program.

(g) The geographic distribution of grants throughout the Nation.

§ 54.407 Termination.

(a) *Termination by the Surgeon General.* Any grant award may be revoked or terminated by the Surgeon General in whole or in part at any time whenever he finds that in his judgment the grantee has failed in a material respect to comply with requirements of Title IX and the regulations of this subpart. The grantee shall be promptly notified of such finding in writing and given the reasons therefor.

(b) *Termination by the grantee.* A grantee may at any time terminate or cancel its conduct of an approved project by notifying the Surgeon General in writing setting forth the reasons for such termination.

(c) *Accounting.* Upon any termination, the grantee shall account for all expenditures and obligations charged to grant funds: *Provided*, That to the extent the termination is due in the judgment of the Surgeon General to no fault of the grantee, credit shall be allowed for the amount required to settle at costs demonstrated by evidence satisfactory to the Surgeon General to be minimum settlement costs, any noncancellable obligations incurred prior to receipt of notice of termination.

§ 54.408 Nondiscrimination.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Regulations implementing the statute have been issued as Part 80 of Title 45, Code of Federal Regulations. The regional medical programs provide Federal financial assistance subject to the Civil Rights Act and the regulations. Each grant is subject to the condition that the grantee shall comply with the requirements of Execu-

tive Order 11246, 30 F.R. 12319, and the applicable rules, regulations, and procedures prescribed pursuant thereto.

§ 54.409 Expenditures by grantee.

(a) *Allocation of costs.* The grantee shall allocate expenditures as between direct and indirect costs in accordance with generally accepted and established accounting practices or as otherwise prescribed by the Surgeon General.

(b) *Direct costs in general.* Funds granted for direct costs may be expended by the grantee for personal services, rental of space, materials, and supplies, and other items of necessary cost as are required to carry out the purposes of the grant. The Surgeon General may issue rules, instructions, interpretations, or limitations supplementing the regulations of this subpart and prescribing the extent to which particular types of expenditures may be charged to grant funds.

(c) *Direct costs; personal services.* The costs of personal services are payable from grant funds substantially in proportion to the time or effort the individual devotes to carrying out the purpose of the grant. In such proportion, such costs may include all direct costs incident to such services, such as salary during vacations and retirement and workmen's compensation charges, in accordance with the policies and accounting practices consistently applied by the grantee to all its activities.

(d) *Direct costs; care of patients.* The cost of hospital, medical or other care of patients is payable from grant funds only to the extent that such care is incident to the research, training, or demonstration activities supported by a grant hereunder. Such care shall be incident to such activities only if reasonably associated with and required for the effective conduct of such activities, and no such care shall be charged to such funds unless the referral of the patient is documented with respect to the name of the practicing physician making the referral, the name of the patient, the date of referral, and any other relevant information which may be prescribed by the Surgeon General. Grant funds shall not be charged with the cost of—

(1) Care for intercurrent conditions (except of an emergency nature where the intercurrent condition results from the care for which the patient was admitted for treatment) that unduly interrupt, postpone, or terminate the conduct of such activities.

(2) Inpatient care if other care which would equally effectively further the purposes of the grant, could be provided at a smaller cost.

(3) Bed and board for inpatients in excess of the cost of semiprivate accommodations unless required for the effective conduct of such activities. For the purpose of this paragraph, "semiprivate accommodations" means two-bed, three-bed, and four-bed accommodations.

§ 54.410 Payments.

The Surgeon General shall, from time to time, make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement for expenses to be incurred or incurred to the extent he determines such payments necessary to carry out the purposes of the grant.

§ 54.411 Different use or transfer; good cause for other use.

(a) *Compliance by grantees.* If, at any time, the Surgeon General determines that the eligibility requirements for a program are no longer met, or that any facility or equipment the construction or procurement of which was charged to grant funds is, during its useful life, no longer being used for the purposes for which it was constructed or procured either by the grantee or any transferee, the Government shall have the right to recover its proportionate share of the value of the facility or equipment from either the grantee or the transferee or any institution that is using the facility or equipment. The Government's proportionate share shall be the amount bearing the same ratio to the then value of the facility or equipment, as determined by the Surgeon General, as the amount the Federal participation bore to the cost of construction or procurement.

(b) *Different use or transfer; notification.* The grantee shall promptly notify the Surgeon General in writing if at any time during its useful life the facility or equipment for construction or procurement of which grant funds were charged is no longer to be used for the purposes for which it was constructed or procured or is sold or otherwise transferred.

(c) *Forgiveness.* The Surgeon General may for good cause release the grantee or other owner from the requirement of continued eligibility or from the obligation of continued use of the facility or equipment for the grant purposes. In determining whether good cause exists, the Surgeon General shall take into consideration, among other factors, the extent to which—

(1) The facility or equipment will be devoted to research, training, demonstrations, or other activities related to Title IX diseases.

(2) The circumstances calling for a change in the use of the facility were not known, or with reasonable diligence could not have been known to the applicant, at the time of the application, and are circumstances reasonably beyond the control of the applicant or other owner.

(3) There are reasonable assurances that other facilities not previously utilized for Title IX purposes will be so utilized and are substantially the equivalent in nature and extent for such purposes.

§ 54.412 Publications.

Grantees may publish materials relating to their regional medical program without prior review provided that such publications carry a footnote acknowledging existence from the Public Health Service, and indicating that findings and conclusions do not represent the views of the Service.

§ 54.413 Copyrights.

Where the grant-supported activity results in copyrightable material, the author is free to copyright, but the Public Health Service reserves a royalty-free, nonexclusive, irrevocable license for use of such material.

§ 54.414 Interest.

Interest or other income earned on payments under this subpart shall be paid to the United States as such interest is received by the grantee.

Dated: December 22, 1966.

[SEAL] WILLIAM H. STEWART,
Surgeon General.

Approved: January 12, 1967.

JOHN W. GARDNER,
Secretary.

[F.R. Doc. 67-592; Filed, Jan. 17, 1967; 8:49 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1096]

[Docket No. AO—257–A13]

MILK IN NORTHERN LOUISIANA MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Northern Louisiana marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 3d day after publication of this decision in the FEDERAL REGISTER with respect to Issue No. 5 (deletion of the base and excess plan) and not later than the 10th day after publication in the FEDERAL REGISTER with respect to the other issues. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Shreveport, La., on December 6, 1966, pursuant to notice thereof which was issued August 23, 1966 (31 F.R. 11318), and a rescheduled notice of hearing which was issued September 8, 1966 (31 F.R. 12023).

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

1. Classification of ending inventory;
2. Classification of transfers of fluid milk products to a nonpool plant;
3. Level of Class II price;
4. Exemption of milk plants operated by governmental agencies; and
5. Deletion of base and excess plan.

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

1. *Classification of ending inventory.* Fluid milk products on hand in packaged form at the end of the month should be classified as Class I milk. Fluid milk products on hand at the end of the month in bulk form should continue to be classified as Class II.

The order presently classifies all ending inventory of fluid milk products as Class II milk. This includes both bulk and packaged products on hand in the plant at the end of the month. The Class II classification of these quantities is subject to adjustment in the next month depending on the handler's entire utilization.

Modification of this procedure by classifying ending inventory of packaged fluid milk products as Class I will reduce the amount of declassification in the subsequent month and permit a closer relationship between handlers' internal accounting methods and required order accounting.

Handlers, for their own accounting purposes, may use the term inventory to include packaged products which have left the plant and are in transit or at distribution points. However, current order provisions which classify inventory as Class II would not comport with inclusion of packaged items which have left the handler's plant. Accordingly, handlers have been paying the Class I milk price of 1 month for products held in their distribution systems outside the plant, and the Class I price of the following month for ending inventories of packaged milk held in their processing plants. The proposed modification would remove this difference in pricing.

The adoption of the plan of classifying all packaged fluid milk products on hand at the end of the month as Class I milk will, in the long run, neither affect handlers' costs nor producers' returns. In the first month in which it is effective, it will increase handlers' costs by the difference between the Class I and Class II prices on the volume of packaged milk previously classified as Class II inventory. This amounts to establishing a Class I value at an earlier date for products which would be entirely or very substantially valued at the Class I price in the succeeding month under the present order provisions.

To insure that all handlers pay the current month's Class I milk price for fluid milk disposed of during the month, it is provided that if the Class I milk price increases over the previous month, the handler will be charged the difference between the Class I milk price for the current month and the Class I milk price for the preceding month on the quantity of beginning inventory of packaged products assigned to Class I milk in the current month. Likewise, if the Class I milk price decreases, the handler will receive a corresponding credit.

To accommodate this change in the classification of fluid milk products in packaged form in inventory, the allocation section of the order should provide that inventory of such packaged fluid milk products on hand at the beginning of the month be subtracted from Class I milk utilization immediately after the allocation of shrinkage and packaged fluid milk products from other orders and before making the other assignments therein provided. Inventory of fluid milk products in bulk form would continue to be handled as under the present provisions of the order.

Inventories of packaged fluid milk products and Class II products on hand at the beginning of the first month in which the amendment of the order becomes effective should be allocated to any available Class II utilization of the plant during the month. This is in recognition of the classification of such items in Class II in the month just prior to amendment. This procedure will preserve the priority of assignment to current receipts of producer milk and to current Class I utilization of the plant.

2. *Classification of transfers of fluid milk products to a nonpool plant.* The classification of fluid milk products transferred to a nonpool plant should be modified in the case where the nonpool plant in turn transfers fluid milk products to pool plants.

A handler proposed that the quantity of skim milk and butterfat involved in the double transfer (from a pool plant to a nonpool plant and thence to a pool plant) be treated as a direct transfer between pool plants.

Proponent transfers bulk fluid milk from his pool plant to a nonpool plant for use in the production of sour cream. Milk so used is Class I. The nonpool plant disposes of the packaged sour cream to the pool plant of proponent handler or other pool plants. The packaged sour cream thus becomes a receipt at such pool plants of a fluid milk product from an unregulated supply plant. If any of the packaged sour cream is allocated to Class I in the pool plant, it is subject to a charge at the difference between the Class I price and weighted average price.

In the absence of an administrative determination to the contrary, the proponent handler would be paying both the Class I price on the milk as transferred to the nonpool plant for manufacture of sour cream, and also the charge on receipts from an unregulated source to the extent the sour cream is returned to his plant and allocated to Class I. A similar combination of charges in excess of the Class I price would apply if the sour cream were disposed of to another pool plant. The proposal made by the handler would eliminate the duplication of

charges. His proposal was limited to apply only to sour cream.

As adopted herein, the modification would apply in the case of any fluid milk product received from a nonpool plant that receives equivalent quantities of skim milk and butterfat from pool plants in the form of fluid milk products. Products other than sour cream may from time to time be handled in a similar manner which, without this modification, would result in a duplication of charges.

The provision, as adopted, would provide that the transfer between two pool plants (via the nonpool plant) would be Class II unless the total allocation of milk in the transferee plant required a different classification. It further provides that if this classification procedure results in milk from two or more handlers being classified as Class I, such classification shall be shared pro rata between such handlers in ratio to the quantity the handlers transferred to the nonpool plant.

Since the quantities of skim milk and butterfat involved would be treated as direct transfers between pool plants, these items would not be included in the allocation procedure for receipts from nonpool plants.

3. *Level of Class II price.* The Class II price should be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin, as reported by the U.S. Department of Agriculture, adjusted to a 3.5 percent butterfat test, but not to exceed a revised butter-powder formula described herein.

At the present time, the Class II price is based on a butter-powder formula with a deduction of 5 cents for the months of March through June.

The cooperative association proposed that the Class II price be the basic formula price (Minnesota-Wisconsin manufacturing milk price) for the months of August through February, and 10 cents less in the months of March through July. Proponents also requested that the price not exceed the present butter-powder formula price plus 10 cents.

The proponent cooperative association assumes the major responsibility for handling any reserve milk not accepted at pool plants. In 1964 and 1965, milk of the cooperative's members disposed of to nonpool plants amounted to 18.9 and 25.4 million pounds or 53 and 62 percent, respectively, of the Class II milk of the market. Most of the other Class II milk in the market was utilized at pool plants. Milk moved off the market by the association was delivered primarily to a manufacturing plant at Sulphur Springs, Tex.

The association stated that the Minnesota-Wisconsin manufacturing milk price, with proposed modifications, would better represent the value of Class II milk in this market than the present price formula. Prices paid at nonpool plants for milk delivered by the association have exceeded the order Class II prices. Average prices received at the Sulphur Springs plant exceeded the order Class II prices in 1964, 1965 and the first 10 months of 1966, by 24 cents, 34 cents, and 44 cents, respectively.

The formula proposed by the association would have produced prices in 1964, 1965 and the first 10 months of 1966 which would have exceeded the present Class II prices by 6.1 cents, 9.2 cents and 10.6 cents, respectively. The association did not support a Class II formula as high as the prices received at nonpool outlets because of handling charges incurred.

The price level now paid by regulated plants for Class II milk does not reflect the full value of such milk as delivered to plants. The price for manufacturing milk should be at a level which will provide the highest possible returns to producers in the market while at the same time encouraging the orderly marketing of reserve milk. A price formula using the Minnesota-Wisconsin price but not to exceed a representative butter-powder value would provide a price more closely representing the value of the milk than the existing formula, and would allow for orderly disposition of reserve milk.

The particular butter-powder formula here adopted would be the Chicago butter price multiplied by 4.2, plus the spray process nonfat dry milk price per pound multiplied by 8.2, less 48 cents. The Minnesota-Wisconsin series, limited by this butter-powder ceiling would have produced prices of $3.16, $3.22 and $3.72 in 1964, 1965 and the first 10 months of 1966, respectively. These prices would have been higher than the present Class II formula by 9.7 cents, 10.6 cents and 11 cents, respectively.

The use of the Minnesota-Wisconsin manufacturing milk price as a major component of the price formula is founded on the premise that in the highly competitive dairy industry average prices which are paid in areas where there is substantial competition for manufacturing milk provides as good a measure of its value as can be obtained. The Minnesota-Wisconsin price series is representative of prices paid to farmers for about one-half of the manufacturing grade milk sold in the United States. In Minnesota about 84 percent of the milk sold off farms is of manufacturing grade and in Wisconsin, about 58 percent.[1] There are many plants in these States which are competing for such milk supplies. This price series reflects a price level determined by competitive conditions which are affected by demand in all of the major uses of manufactured dairy products. Further, it reflects the supply and demand of manufactured dairy products within a highly coordinated marketing system which is national in scale. Milk products which are manufactured by handlers in the Northern Louisiana market compete within this system.

The use of a butter-powder price as a ceiling on the Class II price would insure that the Class II price will continue to reflect the product values of butter and powder in the event of an undue divergence in the relationship between such values and the Minnesota-Wisconsin prices. Recognition should be given to the possibility that a particular segment of the manufactured milk industry may be influenced occasionally by certain supply-demand conditions not affecting the remainder of the industry. Such conditions may not always be reflected sufficiently in the Minnesota-Wisconsin price series. A comparable price ceiling is used in a number of Federal order markets in connection with the use of the Minnesota-Wisconsin price for pricing milk in manufacturing uses similar to Class II uses in the Northern Louisiana market.[2]

The cooperative association's request that 10 cents be deducted from the basic formula during the months of March through July in determining the Class II price is denied. Proponents were concerned that the milk supplies available during the months of flush production might be great enough to depress the manufacturing milk prices paid by nonpool plants below the butter-powder formula.

A need for a 10-cent deduction in March through July was not established. During March through July 1964 the price received at the nonpool plant exceeded by 10 cents the formula herein adopted, by 19 cents in 1965, and by 31 cents in 1966. The improvement of prices obtainable at nonpool outlets relative to the adopted formula suggests that normally the milk could be disposed of without loss.

4. *Exemption of milk plants operated by governmental agencies.* A milk plant operated by a governmental agency should be exempt from all provisions of this order.

The proponent cooperative association requested that the dairy plant operation of Louisiana Technical College be exempt from the provisions of the Northern Louisiana Federal milk order.

The College maintains a dairy herd and a processing plant in connection with the research and educational functions. Milk that is not needed for research projects is disposed of in fluid form through campus cafeterias or manufactured into ice cream, cottage cheese or other dairy products. During those periods when students are on vacation, the unneeded production is sold to the cooperative association. During the school year relatively small quantities of supplemental milk are needed and are obtained from the cooperative association.

The Technical College is an example of a governmental institution which, insofar as its milk production, processing and disposition are concerned, represents a relatively self-contained opera-

[1] Official notice is taken of the "Supplement for 1963–64 to Dairy Statistics through 1960," Statistical Bulletin No. 303, Economic Research Service, USDA, June 1965.

[2] Official notice is taken of Federal Orders No. 131, 9, 35, 47, 49, 36, 41, 40, 43, 134, 8, and 48 for the Central Arizona, Clarksburg, Columbus, Fort Wayne, Indianapolis, Northeastern Ohio, Northwestern Ohio, Southern Michigan, Upstate Michigan, Western Colorado, Wheeling, and Youngstown-Warren markets.

tion with only small quantities of milk interchanged with the other parties in the market. Thus, its milk production does not represent a supply for the rest of the market, nor does its milk uses represent anything but minor use of market milk supplies. In these circumstances, there is not substantial basis for including the establishment under full regulation.

In most months the College has been exempt from full regulation by virtue of qualifying as a producer-handler. In some months, however, it became fully regulated because of receiving milk from dairy farmers. To maintain status as a producer-handler the College would need to limit its source of supply for Class I milk to its own farm production and transfers from pool plants.

The order should be amended in a manner to exempt the milk handling operation of the Technical College from all regulation. At the same time, it should be provided that the College may dispose of its excess milk to handlers in the market or receive supplemental supplies from pool plants, but in a manner which does not interfere with the operation of the order. The order should provide that milk received at a pool plant from such an institution be assigned first to Class II in the pool plant. This is proper, since it clearly represents surplus to the institution's production, processing, and consumption operations and does not represent a reliable supply for the market.

Further, the Louisiana Technical College (and similar institutions) may at times need to purchase supplemental supplies from handlers who would be regulated by the order. It may reasonably be expected that purchases in the form of fluid milk products would be needed and used for Class I purposes. The order should provide, therefore, that fluid milk products transferred or diverted from pool plants to an exempt plant operated by a governmental agency be classified as Class I.

An exempt plant operated by a governmental agency could receive supplemental milk from regulated handlers either by shipments from pool plants or by a diversion of a producer's milk from the farm. A dairy farmer delivering his milk to an exempt governmental plant would not qualify as a producer, however, unless such delivery was accounted for by a regulated handler as diverted milk.

In addition to the Louisiana Technical College, there are other State agencies which operate milk plants. The record is not clear with respect to their identity or to the operation of these milk plants. Further, governmental agencies at other than the State level may undertake to operate plants that utilize their own herd production and receipts from other sources. Ordinarily milk produced and sold by a governmental agency would be largely for purposes within the agency. Regulation of such an operation could be disruptive to the purposes of such agencies dairy operations and would not serve any useful purpose in effective order regulation for the market. It is concluded, therefore, that the exemption should extend to all dairy plants operated by governmental agencies.

5. *Deletion of the base and excess plan.* The "base and excess" plan for distributing returns for milk among producers no longer tends to effectuate the purposes of the Agricultural Marketing Agreement Act and should be discontinued.

The base and excess plan was incorporated in the order to provide incentive to producers to reduce the fluctuations in the amount of milk supplied to the market throughout the year. The plan permits each producer to establish a base according to his deliveries to pool plants in September, October, November, and December of each year. In each of the subsequent months of February through July, separate uniform prices are computed for "base" milk and "excess" milk under provisions that allot Class I uses first to base milk. Each producer is therefore paid a uniform price for base milk and a uniform price for excess milk reflecting in each case the quantity of base and excess in the milk he has delivered. In all other months, producers receive the marketwide uniform price for all milk delivered to pool plants.

A producer association representing about 70 percent of the producers supplying the market proposed that the base and excess plan be removed from the order. There was no testimony at the hearing opposing such proposal.

The cooperative complained that the present base and excess plan under the Federal order has some tendency to result in undesirable production patterns among members. The association also operates its own base plan which is effective all 12 months of the year. This, the association stated, neutralizes the tendency of some producers to increase fall production more than needed during the Federal order base-making period. The existence of two base-excess plans, however, results in duplication of accounting and confusion.

The market has achieved the objective of relatively even production throughout the year. Changed circumstances in the market including the general adoption of bulk tank handling on the farm and other production technology will help dairy farmers to maintain such even production. Under the circumstances, the base-excess plan has served its purpose, but is no longer needed.

It is concluded that the base and excess plan should be deleted from the order. It should be deleted at the earliest possible date prior to the next base payment period of February 1967 through July 1967 in order that producers will know in advance that payments during these months will be at the uniform price rather than base and excess prices.

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

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

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

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

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

Recommended marketing agreement and order amending the order. The following order amending the order as amended regulating the handling of milk in the Northern Louisiana marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. Section 1096.30(a)(1)(iv) is revised to read as follows:

§ 1096.30 Reports of receipts and utilization.

(a) * * *

(1) * * *

(iv) Inventories of fluid milk products on hand at the beginning and end of the month, separately in bulk and in packaged form.

* * * * *

2. In § 1096.41, paragraphs (a) and (b)(3) are revised to read as follows:

§ 1096.41 Classes of utilization.

* * * * *

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraph (b) (2) and (4) of this section;

(2) Contained in inventory of packaged fluid milk products on hand at the end of the month; and

(3) Not specifically accounted for as Class II milk; and

(b) *Class II milk.* * * *

(3) In inventories of fluid milk products in bulk form on hand at the end of the month;

* * * * *

3. Section 1096.44(b) is revised.

4. Section 1096.44(d)(3) is revised by renumbering subdivisions (iii) and (iv) as (iv) and (v), respectively, and adding a new subdivision (iii) immediately after subdivision (ii).

5. The introductory text of § 1096.44 (e) is revised.

Paragraphs (b) and (d)(3) (iii), (iv), and (v) and the introductory text of paragraph (e) of § 1096.44 read as follows:

§ 1096.44 Transfers.

* * * * *

(b) As Class I milk if transferred from a pool plant to a producer-handler or transferred or diverted to a plant exempt pursuant to § 1096.60(b);

* * * * *

(d) * * *

(3) * * *

(iii) Remaining quantities of skim milk and butterfat transferred to the nonpool plant shall be assigned next to the skim milk and butterfat in transfers of fluid milk products from the nonpool plant to a pool plant(s), classified as if it were a direct transfer pursuant to paragraph (a) of this section from one pool plant to another pool plant with Class II utilization indicated: *Provided*, That if the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat covered by this subdivision being classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers according to the respective quantities of fluid milk products each handler transferred to the nonpool plant unless, at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

(iv) Class I utilization in excess of that assigned pursuant to subdivisions (i), (ii), and (iii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(v) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk; and

(e) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

* * * * *

6. In § 1096.46(a), a new subparagraph (2–a) is added immediately following subparagraph (2) and subparagraphs (3)(iii) and (5) are revised, all of which to read as follows:

§ 1096.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(2–a) Except for the first month this provision is effective, subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(3) * * *

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order or from a plant exempt pursuant to § 1096.60(b).

* * * * *

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products (and, for the first month subparagraph (2–a) of this paragraph is effective, the pounds of fluid milk products in packaged form) on hand at the beginning of the month;

* * * * *

7. Section 1096.51(b) is revised to read as follows:

§ 1096.51 Class prices.

* * * * *

(b) *Class II milk price.* The Class II milk price shall be the basic formula price computed pursuant to § 1096.50, but not to exceed a price computed as follows:

(1) Multiply by 4.2 the Chicago butter price;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

8. Section 1096.60 is revised to read as follows:

§ 1096.60 Exemptions.

(a) Producer handler: Sections 1096.40 to 1096.46, 1096.50 to 1096.54, 1096.65 to 1096.67, 1096.70 to 1096.75, 1096.80 to 1096.86, inclusive, shall not apply to a producer handler; and

(b) None of the provisions of this part except § 1096.21 shall apply to a plant operated by a governmental agency.

9. Section 1096.70(c) is revised to read as follows:

§ 1096.70 Computation of the net pool obligation of each pool handler.

* * * * *

(c) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the appropriate Class II milk price for the preceding month and the appropriate Class I milk price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1096.46(a)(5) and the corresponding step of § 1096.46(b); and

(2) Multiply the difference between the appropriate Class I milk price for the preceding month and the appropriate Class I milk price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1096.46(a)(2–a) and the corresponding step of § 1096.46(b). If the Class I milk price for the current month is less than the Class I milk price for the preceding month, the result shall be a minus amount;

* * * * *

§§ 1096.18, 1096.19 [Revoked]

Base-excess plan. 10. Sections 1096.18 and 1096.19 are revoked.

§ 1096.27 [Amended]

11. In § 1096.27(j)(2) delete "or 1096.-73".

12. Section 1096.27(l)(2) is revoked.

13. Section 1096.30(a)(1)(i) is revised to read as follows:

§ 1096.30 Reports of receipts and utilization.

(a) * * *

(1) * * *

(i) Receipts of milk from producers, including such handler's own production;

* * * * *

14. Section 1096.31(c) is revised to read as follows:

§ 1096.31 Payroll reports.

* * * * *

(c) The number of days, for which milk was received from such producer;

* * * * *

§§ 1096.65, 1096.66, 1096.67 [Revoked]

15. The subheading, "Determination of Base" and §§ 1096.65, 1096.66, and 1096.67 are revoked.

16. Section 1096.72(b) is revised to read as follows:

§ 1096.72 Computation of weighted average price and uniform price.

* * * * *

(b) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price" or the "uniform price" for producer milk.

§ 1096.73 [Revoked]

17. Section 1096.73 is revoked.

18. Section 1096.80(b) is revised and paragraph (c) is revoked as follows:

§ 1096.80 Time and method of payment for producer milk.

* * * * *

(b) On or before the 15th day after the end of each month for milk received during the month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1096.72, subject to the butterfat and location differentials computed pursuant to §§ 1096.74 and 1096.75, respectively; and

(1) Less payment made pursuant to paragraph (a) of this section;

(2) Less marketing service deduction pursuant to § 1096.85;

(3) Plus or minus adjustments pursuant to § 1096.84 for errors in previous payments made to such producers; and

(4) Less proper deduction authorized by such producer.

(c) [Revoked]

* * * * *

Signed at Washington, D.C., on January 13, 1967.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 67-589; Filed, Jan. 17, 1967; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

THIABENDAZOLE

Notice of Proposed Rule Making

Based on available information, the Commissioner of Food and Drugs has concluded that § 121.260 of the food additive regulations should be amended to provide that animal feeds containing thiabendazole not contain bentonite. Information establishes that the presence of bentonite in feeds interferes with the method of analysis for thiabendazole and thereby influences control over the safety and effectiveness of thiabendazole-containing feeds.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120; 31 F.R. 3008), it is proposed that § 121.260 be amended by revising the introduction to paragraph (c) to read as follows:

§ 121.260 Thiabendazole.

* * * * *

(c) The additive is used or intended for use in feeds that do not contain bentonite and as otherwise described, as follows:

* * * * *

Any interested person may, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written comments, preferably in quintuplicate, on this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: January 11, 1967.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 67-593; Filed, Jan. 17, 1967; 8:49 a.m.]

Public Health Service

[42 CFR Part 35]

HOSPITAL AND STATION MANAGEMENT

Fees and Charges for Copying, Certification, Search of Records and Related Services

Notice is hereby given that the Surgeon General of the Public Health Service, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend the regulations in Part 35 of Title 42, Code of Federal Regulations, by adding a new section to Subpart A, establishing fees to be charged for the furnishing of abstracts of medical records and related services. The purpose of this new section is to prescribe an equitable and uniform system of charges for services which result in special benefits to the recipients thereof greater than those accruing to the public at large. Interested persons may submit written data, views, or arguments in regard to the proposed regulation to the Surgeon General, Public Health Service, Building 31, Room 3-A-50, 9000 Rockville Pike, Bethesda, Md. 20014. All relevant material received not later than 30 days after publication of this notice will be considered.

1. Subpart B of Part 35 is amended by the addition of a new § 35.17, to read as follows:

§ 35.17 Fees and charges for copying, certification, search of records and related services.

A prescribed fee, in accordance with the schedule in paragraph (c) of this section, shall be collected for each of the listed services.

(a) *Application for services.* Any person requesting (1) a copy of a clinical record, clinical abstract, or other document containing clinical information; or (2) a certification of a clinical record or document; or (3) a search of clinical records, shall make written application therefor to the Public Health Service facility having custody of the subject matter involved. Such application shall state specifically the particular record or document requested, and the purpose for which such copy or document is desired to be used. The application shall be accompanied by a deposit in an amount equal to the prescribed charge for the service rendered. Where it is not known if a clinical record or other document is in existence, the application shall be accompanied by a minimum deposit of $2.50.

(b) *Authorization for disclosure.* The furnishing of copies of PHS records containing confidential clinical information must comply with the requirements of Part I, Title 42, Code of Federal Regulations, governing authorization for the disclosure of such information.

(c) *Schedule of fees:*

(1) Photocopy reproduction of a clinical record or other document (through use of facility equipment):	
(a) Processing (searching, preparation of record and use of equipment), first page	$3.25
(b) Each additional page	.25
(2) Certification, per document	.25
(3) Unsuccessful searching, per hour (minimum charge 1 hour)	2.50
(4) Clinical abstracts, per request	3.00
(5) Arranging commercial duplication of a clinical record, per request	* 5.50

(6) If the requested material is to be transmitted by registered mail, airmail, or special delivery mail, the postal fees therefor shall be added to the other fees provided above, unless the applicant has included proper postage or stamped return envelopes for this purpose.

* The private concern which duplicates records for an applicant will make a separate charge therefor and will bill the applicant directly.

(d) *Waiver of fee.* The prescribed fee may be waived, in the discretion of the medical officer in charge, under the following circumstances:

(1) When the service or document is requested by another agency of the Federal Government for use in carrying out official Government business.

(2) When a clinical record is requested for the purpose of providing continued medical care to a Service beneficiary by a non-Service physician, clinic, or hospital, in which case the record will be forwarded only to the physician, clinic, or hospital concerned.

(3) When the service or document is requested by an attorney in the prosecution of a Service beneficiary's personal injury claim against a third person, involving the concurrent assertion of a Government medical care claim under 42 U.S.C. 2651-2653. In such case, the service or document requested will be furnished only upon compliance with all additional requirements for the release of records in third party recovery cases, including the proper execution of form PHS-4686, Agreement to Assign Claim Upon Request.

(4) When the service or document is requested by, and furnished to, a Member of Congress for official use.

(5) When the service or document is requested by, and furnished to, a court in lieu of the personal court appearance of an employee of the Public Health Service.