system for all rules and will discontinue issuing CSA Instructions early in 1980. CSA now requires that all grantees purchase copies of the **Code of Federal Regulations** in addition to subscribing to the **Federal Register**. Based on CSA's published rules, CSA has determined that this is not a significant rule.

EFFECTIVE DATE: This rule is effective December 26, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Rita C. Kane, 1200 19th Street, NW., Washington, D.C. 20506. Telephone: (202) 254-5047.

SUPPLEMENTARY INFORMATION: Prior to 1972 the Community Services Administration (CSA), formerly the Office of Economic Opportunity, was not required by statute to codify and publish its regulations in the **Federal Register**. Between 1964 and 1968 CSA issued its regulations in booklets known as Community Action Guides Volumes I and II and through Community Action Memos. Beginning in 1968 all directives were issued in the form of OEO/CSA Instructions.

In 1972 Section 623 [redesignated Section 622, November 2, 1978] of the Economic Opportunity Act of 1964, as amended, required that all new rules, regulations, guidelines, instructions and application forms be published in the **Federal Register**. Since 1972 CSA has utilized a duplicate issuance system for all rules: Publication of its rules in the **Federal Register** and distribution of these same rules as CSA Instructions to its grantees. CSA now is moving towards use of the **Federal Register** as the sole source of publication of its rules. As of October 1, 1979 all CSA Rules (except CSA Instruction 6710-1) have been published in the **Federal Register**.

The **Code of Federal Regulations** (CFR) is a codification of the general and permanent Rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. Each Volume of the Code is revised at least once each calendar year. The Code is kept up to date by the individual issues of the **Federal Register**. These two publications, used together, determine the latest version of any given Rule. Each annual volume of the Code contains amendments published in the **Federal Register** since the last publication.

Upon publication of the October 1, 1979 Volume of the **Code of Federal Regulations** (CFR), Title 45, Part 500 to end, which will be available for distribution (and purchase) in the Spring of 1980, CSA will use the CFR and the daily issues of the **Federal Register** as the systems for making available for public use its rules and regulations. At that time CSA will discontinue the issuance of its Instructions.

Grantees will be required to purchase a copy of the CFR, Title 45, Part 500 to end in addition to subscribing to the **Federal Register** which they are already required to do.

Each grantee should assure that at least one copy of all Community Service Administration Rules are forwarded to the Director of each of its delegate agencies, CAA Board Members, and that CSA Rules are available to the general public.

Graciela (Grace) Olivarez,
Director.

45 CFR §§ 1067.6-1—1067.6-4 and the Subpart heading are revised as follows:

Subpart 1067.6—Access to Publications: Federal Register and the Code of Federal Regulations (CSA Instruction 7000-1a)

Authority: Sec. 602, 78 Stat. 530, 42 U.S.C. 2974.

Subpart 1067.6—Access to Publications: Federal Register and the code of Federal Regulations (CSA Instruction 7000-1a)

§ 1067.6-1 Applicability.

This subpart applies to all grants funded under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1067.6-2 Policy.

(a) CSA publishes all proposed and final rules in the **Federal Register** (Monday and Thursday). CSA's General Conditions Governing Grants states that "Program funds expended under authority of this funding action are subject to the provisions of * * * Community Services Administration (CSA) directives." Therefore in order to have available these directives (rules and regulations) CSA requires grantees to subscribe to the **Federal Register** at $50 a year. (This subscription includes the monthly publication list of CFR sections affected (LSA) and the index to the **Federal Register**.)

(b) Grantees are also required to purchase the Code of Federal Regulations (CFR), Title 45, Part 500 to end, (only) beginning with the October 1, 1979 edition which should be available in the spring of 1980. The price of this edition and the subscription form will be published in the **Federal Register**. These two publications, the **Federal Register** and the Code of Federal Regulations will provide grantees with a complete and up-to-date set of all current CSA rules.

(c) In the interim period, between October 1, 1979 and publication of the 1979 edition of the Code of Federal Regulations (CFR) in the Spring of 1980, new grantees are required to purchase the October 1, 1978 edition of the CFR, Title 45, Part 500 to end, at $8.25 per copy in addition to subscribing to the **Federal Register**.

(d) CSA will automatically forward to these new grantees the October 1, 1979 issue of the **Federal Register** and copies of all other rules published in the **Federal Register** since October 1, 1978 which, combined with the CFR will make up a complete set of CSA rules.

(e) Each grantee should assure that at least one copy of all CSA's Rules are forwarded to the Director of each of its delegate agencies, CAA Board Members, and that CSA Rules are available to the general public.

(f) CSA urges all grantees to purchase "The Federal Register: What It Is And How To Use It" at $2.40 per copy. This Handbook is a guide for the user of the **Federal Register** and the Code Of Federal Regulations.

§ 1067-6.3 Procedures.

The **Federal Register**, the **Code of Federal Regulations**, and the "Federal Register: What It Is And How To Use It" **(Stock No. 022-003-00953-1) can be purchased from: The Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.**

§ 1067.6-4 Allowable cost.

Costs for these publications are an allowable cost charged to grant funds. They should be included under "Other Costs" on the budget form.

[FR Doc. 79-36383 Filed 11-23-79; 8:45 am]
BILLING CODE 6315-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[No. 32153 (Sub-No. 7)]

Rebuilding Rule for Railroad Property Units[1]

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is revising its accounting

[1] This proceeding also embraces part of Docket No. 33145, *Railroad Freight Car Per Diem Charges.*

regulations for identifying railroad rebuilding expenditures (commonly referred to as the Rebuilding Rule, Instruction 2–11(b) of 49 CFR, Part 1201, Subpart A). The objective in revising the Rebuilding Rule is to provide more realistic guidelines for distinguishing railroad rebuilding expenditures from normal maintenance and repairs.

DATES: Effective January 1, 1979.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275–7448.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking and Order (NPR) served on April 24, 1979, and published in the **Federal Register** on April 30, 1979 (44 FR 25256), we made public that we had under consideration a revision to our accounting regulations for identifying railroad rebuilding expenditures. The existing Rebuilding Rule consists of quantitative criteria for use in distinguishing rebuilding expenditures for road and equipment property from ordinary repair and maintenance expenditures. Under this rule, a unit of road or equipment property is accounted for as rebuilt if the project costs exceed more than 50 percent of the current price of a comparable new unit of property. The current accounting regulation would lead to distortion of reported earnings by recognizing only the quantitative nature of repair expenditures and not the underlying benefits.

The revised Rebuilding Rule adopts the criteria required under generally accepted accounting principles (GAAP). GAAP differentiates between a repair and capital expenditure by analyzing the benefits of the expenditure. Restoration expenditures are capitalized if they appreciably extend the service life of the asset or expand its utility; otherwise, the expenditures are considered as merely maintaining or restoring the asset to normal operating condition and are accounted for as an expense. We received seven responses to the NPR. Five responses generally favored the new Rebuilding Rule and two opposed it.

The discussion which follows is arranged according to the subject matter of the various arguments raised by the respondents.

Need for the Accounting Change

Union Pacific (UP) and Southern Railway (Southern) oppose the accounting change because they believe the present regulations provide a sufficient accounting distinction between rebuilding expenditures and repair and maintenance expenditures. Southern believes the current regulations meet the requirements of generally accepted accounting principles (GAAP).

We disagree. The present rule is based solely on a percentage criterion which does not always reflect the underlying benefits of an expenditure. Under the present rule, a rebuilding expenditure which extends the life of an asset will be accounted for as an expense if it does not exceed 50% of the current price of new comparable units of property. This is not the intent of GAAP. The proposed rule meets the intent of GAAP by distinguishing rebuilding expenditures from repair and maintenance expenditures by considering whether an expenditure substantially extends the life of an asset or merely maintains the asset. We believe this is an important distinction which is not provided for in the present rule.

Use of General Guidelines

UP and Southern believe the use of general guidelines leads to subjective judgements and different ledger values for similar equipment. UP and Southern believe using the general guidelines will make accounting control over these expenditures much more difficult.

We recognize that judgments are generally necessary in accounting processes. However, the life analysis techniques (Actuarial, Simulated Plant Record, etc.) currently used in determining the service lives of railroad properties would be helpful in assessing whether an expenditure substantially extended the life of a property. We do not believe this adopted GAAP would prove to be more difficult to audit than any other GAAP's adopted by the Commission previously on other subjects.

Association of American Railroads (AAR), Consolidated Rail Corporation (Conrail), Chessie System (Chessie), Richmond, Fredericksburg and Potomac (RF&P) believe the words "materially" and "substantially" cannot be quantified and should not be used in the proposed rule. Southern disagrees with their views and points out that deleting the materiality guideline would eliminate any remedy against flagrant abuses.

We agree with Southern on the need to maintain the references to materiality. The concept of materiality has long been considered a fundamental part of financial accounting. Numerous references to materiality may be found in accounting literature, including pronouncements of the Financial Accounting Standards Board, Securities and Exchange Commission and other institutions. The American Institute of Certified Public Accountants (AICPA) stated in its Accounting Research Bulletin No. 1:

> The committee contemplates that its pronouncements will have application only to items large enough to be material and significant in the relative circumstances. It considers that items of little or no consequence may be dealt with as expediency suggests.

It is in the same context that we have used the word "material" in our proposed rule.

On the other hand, examples of costs which would be expensed under the existing rule, but which will be capitalized under the new rule, include: (1) Rebuilding a boxcar by (a) reconditioning running gear, (b) strengthening underframe; and (c) replacing side panels, end panels and doors; (2) strengthening the under-carriage of flatcars to permit the carrying of additional weight; (3) rebuilding a diesel locomotive by replacing engines, generator, and traction motors; (4) increasing capacity of an open hopper car by inserting additional side and end panels; and (5) complete rehabilitation of draft and cushion underframe components of a boxcar.

Accounting Safeguards

AAR, Conrail, Chessie and RF&P believe the present Authority for Expenditure (AFE) procedures are adequate to account for capitalized rebuilding costs.

We agree that the AFE procedures are adequate to allow the necessary control over rebuilding expenditures. In keeping with our policy of minimizing the accounting and reporting burden, where they are unnecessary, we have deleted the additional accounting safeguards.

AAR Circular OT–37–B

AAR and the Chicago and Northwestern Transportation Company (C&NW) do not believe the proposed rebuilding rule would conflict with AAR Circular OT–37–B which provides guidelines for determining value and age of rebuilt, rehabilitated and secondhand cars for car-hire purposes. Chessie and Southern believe AAR should review the provisions of Circular OT–37–B. In light of these differences of opinion, we suggest that any differences be resolved to protect the intent of the circular for car-hire purposes.

Tax Consequences

AAR and UP have indicated that there may be tax consequences associated with the proposed accounting change. AAR believes the Internal Revenue Service may, because of our accounting change, revert to the use of the extension of life test for use in distinguishing between capital and repair expenses which it used prior to 1971.

We have no evidence other than the statements made by AAR and UP to support this contention. We believe the accounting change will provide the Commission with improved information on accounting for rebuilding versus repair costs. We would not anticipate any major changes in present tax laws as a result of this accounting change.

Dismantling Costs

AAR and Conrail believe dismantling costs should be capitalized as a cost of the new unit. No reason was given.

We disagree. Dismantling costs are associated with the services of the old unit. Consequently, expenses associated with removal of the old unit should be expensed.

This rule does not significantly affect the quality of the human environment or energy consumption.

Accordingly, 49 CFR Part 1201, Subpart A, is revised as shown below.

This revision is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553 and 559.

Decided: November 7, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis.

Agatha L. Mergenovich,

Secretary.

Appendix A

The text of instruction 2–11 "Units of Property rebuilt or converted" is revised as follows:

2–11 *Units of Property rebuilt or converted.*

(a) *Rebuilding expenditures.* Carriers shall be governed by the following provisions when determining and accounting for depreciable road and equipment property rebuilding expenditures:

(1) Rebuilding expenditures are those cost actually incurred which substantially extend the service life or substantially increase the utility of depreciable road and equipment property. The rebuilding expenditures shall be material in nature relative to the current replacement cost of a similar new unit of road or equipment property. Expenses resulting from delayed maintenance and repairs shall not be considered in determining materiality.

(2) The phrase "extend the service life" means to extend the life of a property unit past its estimated service life.

(3) The term "increased utility" means that the road or equipment property has become more useful, more efficient, more durable, or has greater capacity.

(4) Rebuilt or converted road or equipment property shall be accounted for as an addition to the appropriate property accounts, with the old units accounted for as retired from service. The charge to the appropriate property accounts shall be composed of (i) the cost (estimated if necessary) less a fair allowance for depreciation, or salvage value, whichever is lower, of the parts reused, (ii) the cost of labor expended in rebuilding or in the conversion process, (iii) the cost of additional materials applied, and (iv) any other expenses incurred directly with the rebuilding or conversion. In no case shall the total amount charged to the property accounts for these units exceed the current replacement costs of similar new units that would be used for the same purpose. When a unit of road property or equipment is transferred from one class of service to another, with or without physical conversion, the unit shall be accounted for as retired from its original account and be recorded in a primary investment account appropriate to its new class of service.

(5) If it is necessary to repair the secondhand or reused parts remaining in a rebuilt unit, the repair cost may be added to the value assigned parts in determining the related cost to be capitalized. Associated dismantling costs shall be included in operating expenses.

(b) *Repair expenses.* Expenses pertaining to road and equipment property, which represent normal or delayed repairs and maintenance, shall be expensed in the year incurred.

(c) *File and Storage.* Carriers shall keep records of each rebuilding program readily available. These records shall be provided to representatives of the Commission when requested. The retention period shall be as required by 49 CFR Part 1220, Preservation of Records.

[FR Doc. 79-36313 Filed 11-23-79; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 44, No. 228

Monday, November 26, 1979

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 1004

[Docket No. AO-160-A56]

Milk in the Middle Atlantic Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the present order provisions based on industry proposals which were considered at a public hearing held July 10, 1979. The recommended amendments provide for changing the funding rate for the advertising and promotion program from a fixed level to a rate tied to the level of producers' pay prices in the market. The funding level would be increased from seven cents to an initial level of twelve cents per hundredweight. Producers who do not want to participate in the program would submit one refund request for the year's remaining calendar quarters. Refunds to producers would be made on a monthly basis rather than quarterly. A penalty charge of 1 percent on any overdue obligation of a handler would be due to the administrative expense fund. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

DATE: Comments are due on or before December 11, 1979.

ADDRESS: Comments (five copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6273.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: issued June 20, 1979; published June 25, 1979 (44 FR 36985).

Preliminary Statement

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 Middle Atlantic marketing area. This notice is issued 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).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by December 11, 1979. Five copies of the exceptions should be filed. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business Hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing conducted at Philadelphia, Pennsylvania, on July 10, 1979. Notice of such hearing was issued June 20, 1979 (44 FR 36985).

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

1. Funding rate for the advertising and promotion program.

2. Revision of administrative provisions of the advertising and promotion program.

3. Charges on overdue accounts.

4. Date payments are made from the producer settlement fund.

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. *Funding rate for the advertising and promotion program.* The funding rate for the advertising and promotion program should be modified by changing the present 7-cent rate to a rate determined yearly by multiplying the simple average of the monthly "weighted average prices" for the six-month period ending September 30 by one percent. The resulting figure would be the funding rate for the following calendar year.

Under the revised funding formula, a simple average of the "weighted average prices" for the six-month period ending September 30 would be computed by the market administrator as soon as possible after September 30. The average price would be multiplied by .01 and rounded to the nearest whole cent to determine the actual rate of assessment for the following calendar year (one percent of the producer pay price). As soon as possible after the rate of withholding is computed, the market administrator would notify in writing all producers currently on the market and any new producer that subsequently enters the market of the new withholding rate. This notification would be repeated annually thereafter only if there was any change in the rate from the previous period.

The advertising and promotion program was established under the Middle Atlantic order effective April 1, 1972. The program has been funded since its inception through a monthly assessment on milk delivered during the month by participating producers. The assessment rate was 5 cents per one hundred pounds of milk until January 1, 1977 when the rate was increased to 7 cents per hundredweight. The funds are deducted by the market administrator from the producer-settlement fund and turned over to an agency organized by producers and producers' cooperative associations. Certain reserves are withheld by the market administrator to cover refunds to producers and administrative costs.

The advertising and promotion agency is responsible for the development and implementation of programs and projects approved by the Secretary and designed to carry out the purposes of the Act. The scope of the agency's activities may include the establishment of research and development projects, advertising on a non-brand basis, sales promotion, and educational and other programs designed to improve or promote the domestic marketing and consumption of milk and its products.

The advertising and promotion program is a voluntary program. Accordingly, each producer, on a quarterly basis, is given an opportunity to request a refund of the money withheld from his pool proceeds. About 11 percent of the producers in the market received a refund for the last quarter of 1978.

On behalf of four of its member-cooperatives that supply the majority of the milk regulated under Order 4, a federation of cooperative associations proposed that the funding rate for the advertising and promotion program be increased from 7 cents to one percent of the producer pay price. Another cooperative proposed that the deduction for advertising and promotion be increased to three-quarters of one percent of the average of the monthly weighted average prices for the twelve-month period ending September 30, rounded to the nearest whole cent (three-quarters of one percent of the producer pay price). The resulting figure would be the funding rate for the following calendar year. Proponents of both levels of increased funding contended that the program has contributed to an increase in Class I sales during various periods and has minimized declining sales during times of rising milk prices. It was their position, however, that the current funding rate is no longer adequate because inflation has caused the cost of the advertising and promotion activities to rise significantly faster than the program's resources. They also contended that inflation has caused a reduction in the amount of advertising and promotion and, thus, has reduced the effectiveness of the program.

The Order 4 advertising and promotion agency disburses the bulk of its available funds through Dairy Council, Incorporated (DCI) and the United Dairy Industry Association (UDIA). A spokesman for DCI presented information at the hearing regarding the Council's organizational structure, its activities and its need for additional funds to operate a more effective program.

During its 60 years of operation, DCI has provided nutritional education, including the support of milk and milk products, to consumers and professional leaders in medicine, education, nutrition, communications and the dairy industry. This has been accomplished through the use of films, radio, literature, personal contact and a staff of nutritionists.

In recent years DCI's primary source of support in the Middle Atlantic area has been Order 4 dairy farmers. The Council's witness stated that per capita funding has increased 13.6 percent since 1977. During this same period, however, inflation has eroded the buying power of these funds by 17 percent. While the cost of films, literature, and labor have increased, the demand for DCI's services have not slackened. Over 600,000 people saw Dairy Council films in 1978. The distribution of National Dairy Council technical publications doubled between 1976 and 1978. In 1978, DCI distributed over a million pieces of this literature, 93 percent free of charge. The spokesman for DCI concluded his statement by noting that it has become more and more difficult to maintain a qualified staff unless wage levels and employee benefits progress at rates similar to competing organizations. He indicated that since people are the backbone of the Dairy Council program, increased funding is essential.

At the proponent's request, a representative of UDIA presented data in support of the federation's proposed funding rate. These data indicate that from 1972 to 1978 inflation has been rapid, with the Consumer Price Index (CPI) increasing 56 percent. The witness stated that in the Middle Atlantic area the cost of media advertising, particularly television advertising, has increased significantly faster than producer milk prices. It was estimated that by the end of 1979 television advertising costs will have increased 125 percent over 1974 costs. He further testified that while the cost of scientific research has been increasing, UDIA has been forced to decrease the actual dollars spent in this area. When adjusted by the CPI, only about half as many dollars are available for research in 1979 as were available when the program began in 1972.

Proponent of the funding rate equal to three-quarters of one percent of the producer pay price contended that the current rate is no longer generating revenues adequate to support advertising and promotion activities at the level contemplated by producers when the program was adopted. In April 1972, when the order's advertising and promotion provisions became effective, the five-cent rate was equal to 0.76 percent of the weighted average price for that month. At that time, the cooperative's proposed formula also would have generated a five-cent funding rate. The cooperative's witness stated that when the order was amended effective January 1, 1977 the rate adopted at that time, seven cents per hundredweight, equaled 0.68 percent of the simple average of the weighted average prices of the preceding months of October 1975 through September 1976. He contended that the formula proposed by his cooperative to determine the funding rate was in line with the rate at which producers originally funded the program in 1972 and that this formula would provide adequate funding for the advertising and promotion program in the years to come.

The federation which proposed a funding rate of 1% of the producer pay prices contended that any rate less than 1% would not generate the funds necessary to carry out the intended advertising and promotion program in the Order 4 area. It is their position that basing the rate upon one percent of the weighted average price would allow the level of funds available for the agency to keep up to date on a continual basis.

An increase in the funding rate for the advertising and promotion program is warranted in view of the increased costs of the program's activities that have occurred over its duration. Inflation has impacted on every area of activity pursued by the program. The Consumer Price Index increased 56% between 1972 and 1978 and is expected to rise sharply again this year. The cost of labor, research, and printing has increased substantially over this period. In terms of a dollar's worth of advertising in 1974, radio advertising in the Middle Atlantic area currently costs about $1.53. The greatest cost increase has occurred in local television advertising. One dollar's worth of television advertising in 1974 cost $1.73 in 1978 and is expected to average $2.26 during 1979.

In 1972, when the advertising and promotion program was adopted, the 5-cent rate was equal to 0.77 percent of the weighted average prices for the six-month period ending September 30, 1971. On January 1, 1977, when the order's funding rate was amended, the adopted 7-cent rate equaled 0.70 percent of the weighted average prices for the six months ending September 30, 1976. It can therefore be concluded that a funding rate equal to three-quarters of one percent of producer pay prices, as noted by its proponent, would be more in line with the rates Order 4 producers favored in 1972 and 1977 than a one percent funding rate. Cooperatives representing a large proportion of the Middle Atlantic producers, however, now favor expanding their support of the advertising and promotion program to one percent of producer pay prices. If this rate were now if effect, the assessment for 1979 and 1980 would be 11 cents and 12 cents per hundredweight, respectively. In view of the substantial producer support in the market for the higher funding rate, and in light of the voluntary nature of the program, it is reasonable that the rate of funding be increased to one percent of the producer pay prices.

Due to the voluntary nature of the program, a producer who wants to participate at a lower funding level than provided in the order may do so by electing to participate only intermittently. For example, a producer could participate in the program for the first three quarters of a year and request that his money be refunded for the last quarter. By such means a producer could fund the program at whatever level he believes to be appropriate.

Conforming changes have been made in the order to recognize that the current references in some sections to "weighted average price plus 7 cents" will no longer be appropriate. In implementing the revised funding rate for the advertising and promotion program, the order has been modified so that the weighted average price would be computed without deducting the amount of money to be withheld for such program. Thus, the current references to "weighted average price plus 7 cents" are changed to read "weighted average price". Under the adopted changes, the computation of the uniform prices for base milk and excess milk will continue, however, to reflect the deduction applicable for funding the advertising and promotion program.

Because of the quarterly budgeting periods under the terms of the advertising and promotion provisions of the order, it would facilitate the budgeting process to change the funding rate at the beginning of a calendar quarter. It is anticipated that the change in the funding rate will become effective starting the 2nd quarter of 1980.

2. *Revision of administrative provisions of the advertising and promotion program.* A dairy farmer who does not want to participate in the Order 4 advertising and promotion program should have to submit to the market administrator only one request to obtain a refund for the year's calendar quarters that remain at the time of the request. Such requests should be submitted within the first 15 days of December, March, June or September. Also, the producer's deductions for advertising and promotion should be refunded by the market administrator on a monthly basis.

Under the current provisions of the order, the advertising and promotion Agency conducts its operation on a quarterly basis. Producers who participate in the program fund it for a calendar quarter. Those producers who do not want to participate in the program during a calendar quarter must submit a refund request to the market administrator during the first 15 days of the month preceding such quarter. The nonparticipating producers receive their refund from the market administrator shortly after the quarter during which such deductions are made.

An Order 4 cooperative association proposed amendments that would allow a producer not wishing to participate in the advertising and promotion program to obtain a refund by filing a request with the market administrator during the first 15 days of any month. Unless rescinded by the producer, the refund request would apply from the first day of the month in which filed to the end of that calendar year. However, if a dairy farmer acquired producer status for the first time under Order 4 after the 15th day of the month, he would not be subject to the 15-day filing limit during that month. The cooperative also proposed that refunds be made by the market administrator on or before the 20th day of the second month after the milk is delivered. In its brief, another Order 4 cooperative association endorsed these procedures.

The proponent cooperative's witness stated that it was Congress' intention that producers not wishing to participate in the promotion program could get their money refunded without unnecessary impediments. He contended that because producers had to request a refund every 3 months some producers who had wanted refunds had forgotten to notify the market administrator at the proper time. Consequently, they had to participate in the program for an entire quarter. He also contended that his cooperative's proposal would simplify the method of obtaining refunds and make them more prompt.

On behalf of four of its member cooperatives, a federation of cooperative associations opposed any change in the order's procedure for requesting refunds. The federation's witness noted that the provisions of Order 4 require the advertising and promotion Agency to prepare and submit to the Secretary for approval, prior to each quarterly period, a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the agency. He contended that the proposed amendments would make it more difficult for the agency to predict the level of funding and thus make budgeting harder. The federation was also in opposition to the market administrator refunding advertising and promotion deductions on a monthly basis. It argued that monthly refunds would increase administrative costs. The witness stated that the present ask-out and refund procedures are necessary for the effective and efficient expenditure of the funds collected under Order 4 for advertising and promotion.

Proponent on the other hand, maintained that its amendments would not significantly increase budgeting problems. In fact, the cooperative claimed that over time these amendments would make participation in the program more stable and would therefore make it easier to estimate funding and plan a budget. It also contended that monthly refunds would not generate any undue expenses because producers who do not want to participate in the program should not have their funds withheld any longer than necessary.

The order should be amended to allow a producer to request a refund during the first 15 days of the month immediately preceding any calendar quarter, with such request applying for the remainder of the calendar year. This order modification would simplify the procedure for requesting refunds and decrease administrative costs. Producers would only have to submit and the market administrator would only have to process approximately one-fourth as many refund requests as is presently the case.

Producers should not, as proposed by an Order 4 cooperative association, be allowed to obtain a refund by filing a request with the market administrator during the first 15 days of any month. The refund request periods should be limited to the first 15 days of the month preceding each calendar quarter, as is presently the case. Allowing producers to request refunds during any month for the rest of the calendar year would make it more difficult for the advertising and promotion Agency to forecast its funding and plan its budgets, because producer participation could fluctuate after the budget had to be submitted to the Secretary for approval. By only requiring producers to request a refund once a year, while limiting the request periods to the first 15 days of the month preceding each calendar quarter, administrative costs and producer inconvenience could be minimized without increasing the Agency's budgeting problems.

A minor change should be made in the refund procedure with respect to new Order 4 producers. Presently, a dairy farmer who first acquires producer status under Order 4 after the 15th of December, March, June, or September and prior to the start of the next refund notification period may, upon application filed with the market administrator, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This should be changed to allow a new producer who submits a request by the end of the month following the month in which producer status is first acquired to be eligible for a refund on all marketings against which an assessment is withheld during the current calendar year. If producer status is first acquired in December, such producer should be eligible for a refund on all marketings during December and the following calendar year. These changes will coordinate the procedure through which new Order 4 producers may request refunds with the refund procedure adopted herein for producers already on the Middle Atlantic market.

Compared to the present quarterly refunds, monthly refunds would increase administrative mailing costs. When the Order 4 advertising and promotion program was initated, the cost of monthly refunds was high relative to its value to non-participating producers. Since then, however, monthly production per producer [1] and interest rates have increased significantly. Changing the rate of deduction to one percent of the producer pay price, as herein adopted, will substantially increase the amount of money to be refunded. For these reasons monthly refunds are more valuable to non-participating producers than ever before and should be provided.

3. *Changes on overdue accounts.* The order should provide for the application of a late-payment charge of 1 percent per month on handler obligations that are overdue. Such obligations to the market administrator would be those due the producer settlement fund, the administrative expense fund, and the marketing services fund. Any overdue payments by handlers due to producers and cooperative associations would be subject to the late-payment charge. Any such unpaid obligation should be assessed a charge of 1 percent on the first day after the due date of the obligation and on the same day of each succeeding month until the obligation is paid. Any such assessed charges shall be due to the administrative expense fund maintained by the market administrator.

The institution of a late-payment charge on all handler obligations under the order was proposed by cooperative associations representing over 80 percent of the producer supplying the market. The initial proposals by cooperatives, as included in the hearing notice, would provide a late-payment charge of 1 percent beginning the first day the obligation is overdue. At the hearing and in briefs, the cooperatives supported a modification of the charge. As modified, the proposed charge would be at the rate of 1.5 percent per month prorated on a daily basis. No handlers, other than cooperatives, offered proposals, or testified, or filed briefs in this proceeding. One cooperative filed a brief in support of the proponent cooperatives.

Witnesses for proponents indicated that the institution of a charge on overdue obligations of handlers is necessary to encourage prompt payments by regulated handlers. They cited the collection problems being experienced by the market administrator and cooperatives and indicated that producers have an interest in timely payments by handlers. It was pointed out that if producers or their cooperative associations are not paid by the due date they are forced to draw upon their own equity or borrow from commercial sources in order to meet their money obligations. In addition, the spokesmen indicated that those handlers making late payments have a competitive advantage in their business operations relative to handlers making timely payments.

In support of the proposed late-payment charge, the witnesses for the proponent cooperatives contended that the should be related to current interest rates since delinquent handlers are, in effect, borrowing money from producers. Proponents indicated that most country banks now charge 11.5 to 12 percent interest per annum on well-protected, short-term borrowing. They noted that local Production Credit Associations in the Order 4 production area currently charge interest rates varying from 10.5 to 11.5 percent per annum for short-term operating capital. In addition, farm suppliers such as Agway and Southern States Cooperative, petroleum suppliers, farm equipment dealers, and truck companies in the production area assess finance charges or late-payment charges ranging from 1 to 1.5 percent per month.

In urging that the late-payment charge be 1.5 percent per month apportioned on a daily basis, proponents contended that it would be more equitable for handlers. Also, they believed there would be an incentive on the part of a delinqent handler to delay payment for a full month if the full monthly charge was assessed on the first day the payment was overdue.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the market-wide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform prices for base milk and excess milk. The success of this arrangement depends on the solvency of the producer settlement fund. Also, the prompt payment of amounts due the administrative expense fund and the marketing service fund is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner. Payment delinquency also results in an inequity among handlers. Handlers who are late in paying any of the obligations required under the order are, in effect, borrowing money. In the absence of any late-payment charge that is comparable to the cost of borrowing from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Data placed in the record by a representative of the market administrator's office indicate a late-payment experience of a serious and continuing nature on the part of handlers in the Middle Atlantic market. During those months from April 1978 through June 1979 when the payment date did not fall on a weekend or holiday, 67 percent of the moneys owed to the producer-settlement fund were received by the market administrator after the due date. Such delinquent payments ranged from a low of 57 percent of the amount owed by handlers in January 1979 to a high of 79 percent in February 1979. Even for those months in which the payment date fell on a weekend or holdiday, nearly 43 percent of the moneys owed were not received by the first working day thereafter. Also, for the period April 1978 through June 1979, nearly 40 percent of the moneys owed to the producer-settlement fund were not received by the 17th of the month or the first working day thereafter when the market administrator must make payments from the fund. Moneys still not received by the prescribed pay-out date ranged from a low of 18 percent in March 1979 to a high of 50 percent in July 1978. The respective amounts involved were $418,902 in March 1979 and $1,202,603 in July 1978.

[1] Official notice is taken of Federal Order Market Statistics, Annual Summary for 1972, issued June 1973.

With respect to handler obligations due the administrative assessment fund, during the period June 1978 through February 1979, 24 percent of the handlers failed to make such payments by the due date. Such delinquent payments ranged up to 18 days late for December 1978 obligations and 68 days late for August 1978 obligations. (Assessments were waived during March through May 1978 and for the same months in 1979.)

For the period of June 1978 through May 1979, nearly 38 percent of the handlers who made marketing service deductions from payments to producers failed to remit the deductions to the market administrator by the due date. Such delinquencies ranged up to as many as 18 days late in June and December 1978 to 68 days late for August 1978.

In addition to this late-payment information on handler obligations to the market administrator, since October 1978 the market administrator has obtained reports from cooperative associations concerning the date by which cooperatives receive and deposit payments owed to them by handlers. A table based on such reports was placed in the record by a representative of the market administrator's office. The table demonstrates that handlers still have the use of a large proportion of the money owed to cooperatives beyond the due date for making such payments. For example, in April 1979 milk handlers owed cooperatives $12.9 million in partial payments for milk received during the first fifteen days of the month and only $7.3 million were deposited by cooperatives as of the due date. With respect to the final payment for April milk deliveries, handlers owed $13.1 million to cooperatives and cooperatives had deposited only $4.8 million as of the due date.

A further indication of a late-payment problem with respect to milk supplied by cooperatives was entered into the record by a cooperative association. During the eight-month period of October 1978 through May 1979, all partial payment moneys owed to the cooperative by Order 4 handlers were received late; nearly 89 percent were late by eight days or more. All but 0.3 percent of the final payments owed to the cooperative during that period were received after the due date; nearly 62 percent were late by eight days or more. The cooperatives witness stated that for the eight-month period, the value of the late-payments, at an interest cost of 12 percent per year, would total more than $39,000.

On the basis of this payment experience, it is appropriate to institute a late-payment charge on all handler obligations under the order that are overdue. In the absence of a late-payment charge, handlers have little incentive to make their payments on time. Enforcement action may be taken, of course, to seek strict handler compliance with the payment dates. However, this is a cumbersome administrative route, and the practicalness of such action become questionable in the case of handlers who are only several days late. While the charge adopted herein may not result in strict compliance by all handlers, it should provide handlers a substantial inducement to make their payments on time.

The late-payment charge should be established at the rate of 1 percent per month of the unpaid balance. If the charge is to have any impact on handlers in terms of encouraging prompt payments, it must be an amount that is at least comparable to what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. If this is not so, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate. Under the conditions indicated in the record, a monthly charge of 1 percent should provide reasonable assurance that order obligations do not represent a cheap source of money.

As noted earlier, the proponents modified their proposals to apply a higher charge to be apportioned on a daily basis so that handlers would be assessed for only the value of borrowed money for the number of days that the payment is late. These modifications of the proposal should not be adopted. If late-payment charges were treated strictly on a money market basis, the order would merely represent a banking service for handlers who desire to use order obligations as a source of borrowed funds. This is not the intended purpose of the late-payment charge. Rather, it is to be a penalty, in effect, that will induce handlers to pay their obligations under the order on time.

Experience under orders has demonstrated that a late-payment charge applied on the day after the obligation is due is effective in inducing handlers to pay on time. For example, a late-payment charge of 1 percent on the day after the due date was adopted under the neighboring New York-New Jersey order effective November 1, 1977. An exhibit placed in the hearing record contains information as to the timeliness of payments to the producer-settlement fund and administrative fund before and after the late-payment charge was adopted. The exhibit shows that in March 1977—before the late-payment charge was in effect—only 6 of the 79 handlers having obligations to the producer-settlement fund and administrative fund made their payments on time and only 5.3 percent of the total handler obligations to the funds was paid by the due date. In March 1979—16 months after the late-payment charge was instituted—95.2 percent of the total handler obligations to the producer-settlement fund and the administrative fund had been paid to the market administrator on or before the due date.

Under the cooperative's proposals late-payment charges would accrue to the respective person or fund that was paid late. If a handler's payment obligation directly to a producer or cooperative was not paid on time, the late-payment charge would accrue to such producer or cooperative. If a handler is late in paying an obligation to the producer-settlement fund, administrative assessment fund or marketing service fund the late-payment charge assessed would accrue to the particular fund not paid on time.

As further inducement to make payments to producers and cooperatives on time, the late-payment charges should accrue to the order's administrative assessment fund, which is the market administrator's source of funds for activities involved with collections and noncompliance. If the late-payment charge were to be added to the amount owed by handlers to producers and cooperatives, it would likely result in such producers and cooperatives being less concerned whether they are paid on time. Thus, it could be counterproductive to the purpose sought to be achieved by the institution of the late-payment charge. Moreover, if a charge of 1 percent were made with respect to a payment that was only a few days late, it would represent a significantly higher value than the cost of money borrowed from commercial sources for such a short time span. Thus, cooperatives and producers would be placed in a position where they would prefer to be paid several days late and get the late-payment charge. In addition, in a circumstance where a handler buys milk from a cooperative handler on a classified use basis, the obligation on such milk would not be the same as its value at the uniform prices for base milk and excess milk, which is the value the cooperative is entitled to after equalization with the producer-settlement fund. Thus, it would unduly complicate the terms of the order to construct order provisions that would return to producers and cooperatives an equitable late-payment value for their milk if, in fact, such value could be determined.

The late-payment charge on obligations due the producer-settlement fund, marketing services fund, and administrative assessment fund also should accrue to the order's administrative assessment fund. In the case of delinquent handlers, money is spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments or inducing noncomplying handlers to pay on time. The money for expenditures of this type, of course, comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handlers. Thus, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

The late-payment charge provisions as proposed by proponents provide that such charge be applied if payment is not received by the due date. Proponents stated that they consider the present payment dates in the order to be receipt dates and contended that if they were to be postmark dates that such dates should be advanced by two days. In view of the need to make timely payments to handlers from the producer settlement fund, it is essential that money due such fund be received by the due date. Also, since a payment cannot be converted to "good money" by the recipient until it is physically received, more uniform application of the payment schedules to handlers would be effected if the payment dates are applied as receipt dates. Additionally, it is desirable to give handlers all the time possible for submitting their payments and the flexibility of using whatever payment means they wish. This can be achieved best by merely specifying the date by which payment is to be received. Obviously, payment cannot be received on a non-business day. Thus, if a due date falls on a Saturday, Sunday, or national holiday, the due date of the payment should be the next day that the market administrator's office is open for business, for the purpose of applying a late-payment charge.

An additional exception in applying a late-payment charge with respect to any payment sent through the U.S. Postal Service was proposed by a cooperative association. This exception would consider such payment to be made on time if the envelope has a postage cancellation date not later than the second day preceding the due date. Such a provision would enable a handler to have greater assurance that a payment is made on a timely basis. An exhibit in the record indicates that with respect to payments mailed to the market administrator, they are often received within two days of the postmark date. However, the exhibit indicates also that on occasion, such as around Christmas time, some payments are received more than two days after the postmark date.

It is a common practice in the market to send payments through the mail. Handlers would have greater control over knowing whether they are complying with the payment dates if postmark dates applied by the U.S. Postal Service can be used in determining whether a payment is made on time. Moreover, postmark dates would provide reliable evidence for the market administrator to use in verifying the timeliness of payments. Since it would be helpful to handlers and to the market administrator in the determination of when a late-payment charge is to be applied, the proposal relative to postmark dates should be adopted. A postage date applied by a handler's postage meter, however, would not be an acceptable indication of a timely payment, since a handler would be able to predate the envelope.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1 percent on the first day after the due date. Any remaining uppaid portion of the original obligation would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The additional late payment charge would apply not only to the original obligation but to any unpaid late-payment charges previously assessed.

At the time the adopted provisions become effective, there may be handlers with obligations already overdue. In such cases, the newly adopted late-payment charge should apply even though the obligation was incurred prior to the institution of the charge under the order. For transitional purposes, obligations that are outstanding on the effective date of the amended order should not be increased until the day after such type of obligation would be overdue under the amended order.

The provision adopted herein would provide a late-payment charge in the case of an unpaid obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due. Such obligation should be considered to have been payable by the date it would have been due if the report had been filed when due.

Proponents recognized that it may be necessary for the market administrator to require handlers and cooperatives to maintain specific records or make special reports for the purpose of verification of the timeliness of payments made by handlers directly to producers and cooperatives. The attached amendments do not prescribe the specific means by which he shall verify such transactions. The need for such specification should be based on actual experience in the market.

Under the terms of the order, the market administrator has authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be need for more specificity with respect to carrying out the provisions adopted herein, this may be accommodated through the promulgation of appropriate administrative rules with the approval of the Director of the Dairy Division and in consultation with the local industry.

If the purpose of the late-payment provisions adopted herein is to be fully accomplished, it is necessary that payments not only be made on time but must be deposited in the recipient's account as promptly as possible. The proposals considered at the hearing did not encompass new provisions that would assure the prompt deposit of payments received. If serious problems exist with respect to the timely deposit of payments, it may be necessary for the market administrator to promulgate appropriate rules with respect to the deposit of payments received by cooperative associations.

4. *Date payments are made from the producer-settlement fund.* The order should be amended to provide that payments to handlers from the producer-settlement fund should be made on or before the 16th day after the end of the month. However, if the 16th should fall on a Saturday, Sunday or national holiday, the market administrator may delay payments from the fund until the next day his office is officially open for business.

Currently, the order provides that payments from the producer-settlement fund be made on or before the 17th day after the end of the month. Cooperatives proposed that this payment date be advanced one day. In support of the proposal, cooperatives contended that with the adoption of a late-payment charge, as provided herein, it can be expected that the payments to the producer-settlement fund will be received by the due date, the 15th, and therefore, the market administrator would be able to make payments from the fund by the next day.

As previously indicated, it can be expected that the adoption of a late-payment charge will be sufficient inducement for handlers to pay their producer-settlement fund obligations on time. In this circumstance, the market administrator would have sufficient funds to enable him to make the prescribed payments from the fund by the day after payments are due.

The market administrator makes it a practice to notify handlers by telephone on the date the uniform prices are announced of their producer-settlement fund obligation. Such announcement date has not been later than the 12th day after the end of the month. In some cases the postmark dates on envelopes containing handler payments to the producer-settlement fund are the same dates that handlers are notified by telephone of the amount of their obligation. Thus, it is apparent that handlers can make their payments to the producer-settlement fund on or before the due date if they are sufficiently induced to do so.

It is desirable that payments be made from the producer-settlement fund as promptly as possible so that those handlers who receive the funds can make their required payments to producers. Payments to producers are due on or before the 20th day after the end of the month. Thus, adoption of the earlier payment date for payments from the producer-settlement fund will tend to better assure that all producers are paid by the due date.

The order provides that if the balance in the producer-settlement fund is insufficient to make all the prescribed payments, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. This procedure would involve two series of payments and should be avoided when practicable. Advancing the pay-out date could involve the use of this procedure in the case where the date for payments from the fund falls on a Saturday, Sunday or national holiday when the market administrator's office is not open for public business. Therefore, the order should provide that the required pay-out date may be delayed until the next date the market administrator's office is open for business when the pay-out date falls on Saturday, Sunday or national holiday.

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 tentative 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 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. The following order amending the order, as amended, regulating the handling of milk in the Middle Atlantic marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Section 1004.61 is revised to read as follows:

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

(a) For each month the market administrator shall compute the "weighted average price" per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1004.60 for all handlers who filed the reports prescribed by § 1004.30 for the month and who made the payments pursuant to § 1004.71 for the preceding month;

(2) Add an amount equal to the total value of the location differentials commuted pursuant to § 1004.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to § 1004.60(e); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

(b) Subject to paragraph (c) of this section, for each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price;

(ii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iii) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and round to the nearest cent;

(3) Subtract the withholding rate for the advertising and promotion program

as computed in § 1004.121(e). The result shall be the uniform price for excess milk;

(4) From the amount resulting from the computations of paragraphs (a) (1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(5) Subtract the aggregate value of excess milk determined in paragraph (b)(1) of this section;

(6) Divide the result obtained in paragraph (b)(5) of this section by the total hundredweight of base milk for handlers included in the computations pursuant to paragraph (a) of this section and subtract not less than 4 cents nor more than 5 cents per hundredweight; and

(7) Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e). The result shall be the uniform price for base milk.

(c) If the base milk price obtained in paragraph (b)(7) of this section should exceed the Class I price, the aggregate amount in excess thereof shall be included in the computation of the excess milk price pursuant to paragraph (b)(1) of this section, except that if by such addition the excess milk price should exceed the base milk price then the aggregate amount of the excess shall be prorated to the aggregate values of base milk and excess milk on the basis of the respective volumes of base and excess milk.

2. In § 1004.71, paragraph (b)(2) is revised to read as follows:

§ 1004.71 Payments to the producer settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price, adjusted by the applicable location differential on nonpool milk pursuant to § 1004.75(b), with respect to other source milk for which a value was computed pursuant to § 1004.60(e).

* * * * *

3. Section 1004.72 is revised to read as follows:

§ 1004.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1004.71(b) exceeds the amount computed pursuant to § 1004.71(a), subject to the following conditions:

(a) If 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 such payments as soon as the necessary funds are available.

(b) If the 16th day after the end of the month is a Saturday, Sunday, or national holiday, the market administrator may delay payments pursuant to this section until the next day his office is open for public business.

4. In § 1004.73, paragraph (a)(2) is revised to read as follows:

§ 1004.73 Payments to producer and to cooperative associations.

(a) * * *

(1) * * *

(2) On or before the 20th of the following month at not less than the uniform price for base milk computed pursuant to § 1004.61(b) with respect to base milk received from such producer and not less than the uniform price for excess milk computed pursuant to § 1004.61(b) for excess milk received from such producer, subject to the following adjustments:

(i) Proper deductions authorized in writing by such producer;

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

(iii) The butterfat differential computed pursuant to § 1004.74;

(iv) Less the location differential applicable pursuant to § 1004.75; and

(v) If by such date such handler has not received full payment from the market administrator pursuant to § 1004.72 for such month he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

* * * * *

5. In § 1004.75, paragraph (b) is revised to read as follows:

§ 1004.75 Location differentials to producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class II price.

6. In § 1004.76, paragraph (b)(5) is revised to read as follows:

§ 1004.76 Payments by a handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price, subtract its value at the weighted average price, and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price less the value of such milk at the Class II price (except that the Class I price and the weighted average price shall be adjusted for the location of the nonpool plant and shall not be less than the Class II price).

7. A new § 1004.78 is added to read as follows:

§ 1004.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1004.71, 1004.73, 1004.76, 1004.77, 1004.79, 1004.85, or 1004.86 shall be increased 1 percent beginning on the day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) The amount payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section and all such amounts shall be paid to the administrative assessment fund maintained by the market administrator;

(b) Any obligation that was determined at a date later than that 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; and

(c) Payments shall be deemed not to have been made until such payments have been received, except:

(1) Any payment received after the due date in an envelope that is postmarked not later than the second day prior to the due date shall be considered to have been received by the due date; and

(2) If the date by which payments must be received falls on a Saturday or Sunday or on a national holiday, payments shall be considered to have been received by the due date if received not later than the next day on which the market administrator's office is open for public business.

8. In § 1004.120, paragraphs (b), (c) and (d) are revised to read as follows:

§ 1004.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted within the first 15 days of December for milk to be marketed during the following calendar year and during the first 15 days of March, June, or September for milk to be marketed from the first of the immediately following month through the remainder of the calendar year.

(c) Upon first acquiring producer status under this part, a dairy farmer shall, upon application filed with the market administrator pursuant to paragraph (a) of this section by the end of the month immediately following the month in which producer status is acquired, be eligible for refund on all marketings against which an assessment is withheld during the current calendar year and if producer status was first acquired in December such producer shall be eligible for a refund on all marketings during December and the following calendar year. This paragraph also shall be applicable to all producers during the period between the effective date of this paragraph and the beginning of the first quarterly period for which the opportunity exists for such producers to obtain a refund pursuant to paragraph (b) of this section.

(d) A producer, located in a State which has a State advertising and promotion program in which producers are required to participate unless they are participating in an advertising and promotion program under a Federal order, may (in lieu of a refund request) authorize the market administrator to pay to the State the amount of his required participation not in excess of the rate computed pursuant to § 1004.121(e).

9. In § 1004.121 the introductory text of paragraphs (b) (2), (3), and (4), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1004.121 Duties of the market administrator.

* * * * *

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the computation of uniform prices for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) To producers, a refund of the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) To any State, a payment on behalf of any producer for which a specific authorization has been received pursuant to § 1004.120(d), but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producers for which deductions were made pursuant to this paragraph.

(4) After the end of each month, make a refund to each producer who made application for such refund pursuant to § 1004.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to, or on behalf of, the producer pursuant to paragraph (b) (2) and (3) of this section.

(c) Promptly after the issuance of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1004.110 through 1004.122).

* * * * *

(e) In October of each year compute the rate of withholding as follows:

(1) Compute the simple average of the monthly weighted average prices for the six-month period ending September 30; and

(2) Multiply the price computed pursuant to paragraph (e)(1) of this section by one percent and round to the nearest full cent. This rate shall apply during the following calendar year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

Note.—This recommended decision has been reviewed under USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this decision should not be classified "significant" under those criteria. This decision constitutes the Department's Draft Impact Analysis Statement for this proceeding.

Signed at Washington, D.C., on November 19, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-36311 Filed 11-23-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-NE-15]

Airworthiness Directives; General Electric Co. CT58 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require an inspection for an undersized radius of certain stage one turbine wheels used in General Electric CT58 engines. The proposed AD is prompted by a report of an undersized radius which contributed to a stage one turbine wheel failure.

DATES: Comments must be received on or before January 28, 1980.

ADDRESSES:

Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attention: Rules Docket, 12 New England Executive Park, Burlington, Massachusetts 01803.

The applicable service bulletin may be obtained from: General Electric Company, 1000 Western Avenue, Lyon, Massachusetts 01910.

Copies of the service bulletin are contained in the Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Ralph S. Hawkins, Propulsion Section, ANE-214, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7347.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All