by grounds legally sufficient to justify the relief sought.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: October 15, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.378(b) is amended by adding and alphabetically inserting the commodity, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Tomatoes	2
* * * * *	

[FR Doc. 84-28029 Filed 10-23-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300091A; PH-FRL 2699-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Diammonium Phosphate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts diammonium phosphate from the requirement of a tolerance when used as a buffer or surfactant in pesticide formulations. This regulation was requested by the Rohm and Haas Co.

EFFECTIVE DATE: Effective on October 24, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of August 1, 1984 (49 FR 30751), which announced that Rohm and Haas Co. had requested that 40 CFR 180.1001(d) be amended by establishing an exemption from the requirement of a tolerance for diammonium phosphate as a buffer or surfactant in pesticide formulations applied to growing crops only.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 5, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Diammonium phosphate (CAS Reg. No. 7783-28-0).		Buffer, surfactant.
* * * * *		

* * * * *

[FR Doc. 84-28055 Filed 10-23-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173, 177, 178, and 179

[Docket No. HM-115, Amdt. Nos. 173-180, 177-63, 178-82, 179-36]

Cryogenic Liquids; Corrections and Revisions

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule; correction and revisions.

SUMMARY: This document makes additional corrections and clarifying revisions to a final rule published under Docket HM-115 which amended the Hazardous Materials Regulations (49 CFR Parts 171-179) by establishing requirements for the transportation of certain cryogenic liquids (48 FR 27674, June 16, 1983; 48 FR 50440, November 1, 1983, 49 FR 24306, June 12, 1984. This document corrects typographical errors, omissions, discrepancies, and provides answers to questions of general interest received by MTB with respect to those publications. Also, an alternate configuration for the pressure relief device system on cargo tanks used in atmospheric gas (except oxygen) and

helium service is authorized. The final rule under HM–115 carries an effective date of October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Jose Pena (202) 755–4906 or Hattie Mitchell (202) 426–2075, Office of Hazardous Materials Regulation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: This document corrects typographical errors, omissions, discrepancies, and provides answers to questions of general interest received by MTB with respect to those publications. Also, an alternate configuration for the pressure relief device system on cargo tanks used in atmospheric gas (except oxygen) and helium service is authorized.

Because the amendments adopted herein clarify and correct certain provisions of the final rule and impose no new regulatory burden on any person, notice and public procedure are unnecessary and these amendments may be made effective without the customary 30 day delay following publication.

MTB has determined that this rule, as promulgated, is not a "major rule" under terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment was not prepared as the amendments herein are not substantive changes to the final rule.

Based on limited information available concerning size and nature of entities likely to be affected by these amendments, I certify that these amendments will not have a significant economic impact on a substantial number of small entities.

The following is a section-by-section summary of the amendments.

Section 173.10. Paragraphs (a) and (e) are amended for consistency with § 174.204(a)(2) which extended applicability of the delivery requirements to flammable cryogenic liquids.

Section 173.23. Paragraph (e) is amended for consistency with § 178.57–20(a)(9) which, as amended in the June 12, 1984 document, requires a DOT 4L cylinder with an aluminum jacket to be marked "AL."

Section 173.33. In paragraph (b)(2), as amended in the June 12, 1984 document, the parenthetical expression in the first sentence is corrected by adding the word "plate" preceding the word "placed". The fourth sentence is corrected by removing the word "of" and adding the word "or".

Section 173.314. In paragraph (c), the section reference is corrected to read "§ 173.10" in place of "§ 173.432".

Section 173.316. In paragrah (c)(2), as amended in the June 12, 1984 document, the table is corrected by reinstating an omitted filling density at "230 psig" and the design service temperature of oxygen is corrected to read "–320" in place of "–452".

Section 173.318. In paragraphs (b)(1)(i) and (b)(2)(i), MTB is authorizing use of an alternate pressure relief system on cargo tanks used in atmospheric gas (except oxygen) and helium service consisting of at least one pressure relief valve and, if needed, additional pressure relief valves or frangible discs with a combined relieving capacity sized for fire conditions. Present requirements provide that the primary pressure relief system must consist of one or more pressure relief valves. MTB believes that relaxation on the type of pressure relief devices authorized allows the industry greater flexibility in the selection of pressure relief devices and may remove certain operational restraints and reduce hardware costs without any reduction in the level of safety. MTB is making corresponding changes in paragraph (b)(2)(iii) to specify the minimum total capacity for the alternate pressure relief system, and in paragraph (b)(2)(iv) to allow the alternate system to have a liquid flow capacity equivalent to the liquid loading flow rate at a pressure not to exceed 150 percent of the tank design pressure in place of the present 120 percent limit.

In paragraph (e), the parameters for the temperature of a flammable cryogenic liquid in a cargo tank are relaxed to allow a setting that corresponds with the start of travel condition in place of the temperature at loading.

In paragraph (f)(3), the filling density entry for hydrogen at 17 psi is amended by removing "6.5" and adding "6.6". This higher filling density is presently authorized by exemption.

In paragraph (g), as amended in the June 12, 1984 document, MTB expanded the one-way-travel-time (OWTT) marking to include display of the pressures used when a tank is partially unloaded at one or more locations and the control of tank pressure is transferred from the pressure control valve to the pressure relief valve. However, MTB failed to provide an exception from these additional markings for tanks unloaded at one location. MTB is revising paragraph (g) to correct the oversight. Additionally, MTB has received several inquiries on whether the use of an OWTT and the corresponding rated holding time based on loading conditions other than the liquefaction temperature are authorized. MTB takes the position that such OWTTs have always been authorized by § 173.318(e) and, therefore, no change is required to the final rule. Also see preamble discussion to § 177.840.

Section 173.320. The introductory text in paragraph (a) provides an exception from requirements of the subchapter for atmospheric gases and helium used in process systems, such as a refrigeration system, and during loading and unloading operations. Paragraph (a) is revised to clarify that this exception applies even though the pressure may exceed 25.3 psig under these conditions.

Section 172.330(a)(1) requires a tank car to be marked with the proper shipping name or authorized common name of the material contained in the tank car when required by Part 173 or 179. The exceptions specified in § 173.320 do not impose any requirement to mark a proper shipping name on a tank car. However, it does require tank cars to be marked with identification numbers in conformance with § 172.330(a)(2).

Section 177.840. Paragraph (i) is revised to clarify that the cargo tank may not be placed in transportation unless the pressure of the flammable cryogenic liquid lading is equal to or less than that used to determine the marked rated holding time in order to prevent premature venting.

Section 178.338–9. The printing of the formula in paragraph (c)(3)(i) is corrected.

Section 178.338–16. The first sentence in paragraph (a) is amended by removing the word "cargo" preceding the word "tank". This change is made for consistency with the definition of "tank" in § 178.338–1(b).

Section 179.102. In the June 12, 1984 document, MTB granted a petition for reconsideration by revising §§ 179.102–1(a)(6), 179.102–4(1) and 179.102–17(m) to remove the requirement that tank anchor-to-tank shell fillet welds must be examined by radioscopy. However, a requirement that the tank anchor-to-tank shell fillet welds must meet the acceptance standards of AAR specifications for Tank Cars, Appendix W, paragraph W11.06 was continued. It has been brought to MTB's attention that the referenced standard pertains to radiotaped welds and, therefore, is inappropriate. MTB agrees and has corrected the oversight.

Section 179.400–8. The printing of the formula in paragraph (c) is corrected.

List of Subjects

49 CFR Part 173

Gases, Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 177

Motor carriers, Hazardous materials transportation, Highway safety.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 179

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Parts, 173, 177, 178 and 179 of Title 49 Code of Federal Regulations are amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. In § 173.10, paragraphs (a) and (e) are revised to read as follows:

§ 173.10 Tank car shipments.

(a) Tank cars containing any flammable gas (including a cryogenic liquid) or flammable liquid, except liquid road asphalt or tar, may not be offered for transportation unless originally consigned or subsequently reconsigned to parties having a private-siding (see Note 1 of this section) or to parties using railroad siding facilities which have been equipped for piping the liquid from tank cars to permanent storage tanks of sufficient capacity to receive contents of car.

* * * * *

(e) Flammable liquids and flammable gases (including a cryogenic liquid) may not be loaded into tank cars on carrier property from tank trucks or drums.

* * * * *

2. In § 173.23, paragraph (e) is revised to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(e) After October 1, 1984, cylinders manufactured for use under exemptions DOT E–6668 or E–8404 may be continued in use, and must be marked "DOT–4LXXXYY" (XXX to be replaced by the service pressure, YY to be replaced by the letters "AL", if applicable) in compliance with Specification 4L (§ 178.57 of this subchapter) on or before January 1, 1986. The "DOT–4LXXXYY" must appear in proximity to other required specification markings.

§ 173.33 [Amended]

3. In § 173.33, paragraph (b)(2) is amended by revising the parenthetical expression in the first sentence to read "(or a plate placed adjacent to the specification plate)". The fourth sentence is revised by removing the word "of" and adding the word "or".

§ 173.314 [Amended]

4. In § 173.314, paragraph (c) is amended by changing the reference "§ 173.342" to "§ 173.10".

5. In § 173.316, the table in paragraph (c)(2) is amended by adding a filling density at "230 psig" and correcting the design service temperature of oxygen to read as follows:

§ 173.316 Cryogenic liquids in cylinders.

* * * * *

(c) * * *

(2) * * *

Pressure control valve setting (maximum start-to-discharge pressure, psig)	Maximum permitted filling density (percent by weight)				
	Argon	Nitrogen	Oxygen	Helium	Neon
* *	*	*	*	*	
230	119	69	98	12.5	85
* *	*	*	*	*	
Design service temperature (°F)	−320	−320	−320	−452	−411
* *	*	*	*	*	

6. In § 173.318, paragraphs (b)(1)(i), (b)(2)(i), (b)(2)(iii), (b)(2)(iv), (e), the entry for 17 psig in the table in paragraph (f)(3) and paragraph (g) are revised, to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(b) * * *

(1) * * *

(i) Except as otherwise provided in this paragraph, each tank must be protected by a primary system of one or more pressure relief valves and a secondary system of one or more frangible discs or pressure relief valves. For a tank in carbon monoxide service, the secondary system must be pressure relief valves. For a tank used in atmospheric gas (except oxygen) or helium service, an alternate pressure relief system consisting of at least one pressure relief valve is authorized. The discharge from any pressure relief system must be directed upward and unobstructed to the outside of the protective housing in such a manner as to prevent impingement of gas upon the jacket or any structural part of the vehicle. Pressure relief valves must be of the type that automatically open and close at a predetermined pressure.

* * * * *

(2) * * *

(i) *Capacity of Pressure Relief Systems*—(A) *Tanks in oxygen or flammable cryogenic liquid service.* The primary system of pressure relief valves and the secondary system of relief devices must each have a flow capacity equal to or greater than that calculated by the applicable formula in paragraph 5.3.2 or paragraph 5.3.3 of CGA Pamphlet S–1.2.

(B) *Tanks in atmospheric gas (except oxygen) and helium, cryogenic liquid service.* The pressure relief system must have a flow capacity equal to or greater than that calculated by the applicable formula in paragraph 5.3.2 or paragraph 5.3.3 of CGA Pamphlet S–1.2.

(ii) * * *

(iii) The alternate pressure relief system and secondary system of frangible discs or additional pressure relief valves must have the minimum total capacity specified in paragraph (b)(2)(i) of this section, at a pressure not exceeding 150 percent of the tank design pressure.

(iv) The primary system of pressure relief valves must have a liquid flow capacity rated at a pressure not exceeding 120 percent of the tank design pressure, that is equal to or exceeding the maximum rate at which the tank is to be filled. However, a rating pressure not exceeding 150 percent of the tank design pressure is authorized on a tank used in atmospheric gas (except oxygen) and helium, cryogenic liquid service when equipped with the alternate pressure relief system.

* * * * *

(e) *Temperature.* A flammable cryogenic liquid in a cargo tank at the start of travel must be at a temperature sufficiently cold that the pressure setting of the pressure control valve or the required pressure relief valve, whichever is lower, will not be reached in less time than the marked rated holding time for the cryogenic liquid (see §§ 173.33(d)(1)(ii) and 178.338–9(b) of this subchapter).

(f) * * *

(3) * * *

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum set-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)			
	Carbon monoxide	Ethylene	Hydrogen	Methane or natural gas
* *	*	*	*	
17	74.0		6.6	

* * * * *

(g) *One-way travel time; marking.* The jacket of a cargo tank to be used to transport a flammable cryogenic liquid must be marked on its right side near the front, in letters and numbers at least two inches high, "One-Way-Travel-Time —— hrs.", with the blank filled in with a number indicating the one-way travel time (OWTT), in hours, of the cargo tank for the flammable cryogenic liquid to be transported. A cargo tank that is partially unloaded at one or more locations must have additional marking "One-Way-Travel-Time —— hrs. —— psig to —— psig at —— percent filling density," with the second blank filed in with the pressure existing after partial unloading and the third blank filled in with the set-to-discharge pressure of the control valve or pressure relief valve, and the fourth blank with the filling density following partial unloading. Multiple OWTT markings for different pressure levels are permitted.

* * * * *

7. In § 173.320, the introductory text in paragraph (a) is revised by removing the parenthetical expression and, following the word "except" at the end of the introductory text, adding the words "as specified in paragraphs (a)(1) and (a)(2) of this section."; paragraph (a)(3) is added to read as follows:

§ 173.320 Cryogenic liquids; exceptions.

(a) * * *

(3) The requirements of this subchapter do not apply to atmospheric gases and helium—

(i) During loading and unloading operations (pressure rises may exceed 25.3 psig); or

(ii) When used in operation of a process system; such as a refrigeration system.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

8. In § 177.840, paragraph (i) is revised and paragraph (j)(3) is removed to read as follows:

§ 177.840 Compressed gases, including cryogenic liquids.

* * * * *

(i) No person may transport a flammable cryogenic liquid in a cargo tank unless the pressure of the lading is equal to or less than that used to determine the marked rated holding time (MRHT) and the one-way travel time (OWTT), marked on the tank in conformance with § 173.318(g) of this subchapter, is equal to or greater than the elapsed time between the start and termination of travel. This prohibition does not apply if, prior to expiration of the OWTT, the tank is brought to full equilibration as specified in paragraph (j) of this section.

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

9. In § 178.338–9, paragraphs (a), (b)(1), (b)(2) and the formula in paragraph (c)(3)(i) are revised to read as follows:

§ 178.338–9 Holding time.

* * * * *

(c) * * *

(3) * * *

(i) * * *

$q = [n(\Delta h)(85 = t_1)]/[t_e = t_i]$

* * * * *

§ 178.338–16 [Amended]

10. In § 178.338–16, the first sentence in paragraph (a) is revised by removing the word "cargo" preceding the word "tank".

PART 179—SPECIFICATIONS FOR TANK CARS

§§ 179.102–1, 179.102–4 and 179.102–17 [Amended]

11. Sections 179.102–1(a)(6), 179.102–4(l) and 179.102–17(m) are revised to read as follows:

"Tank anchor-to-tank shell fillets welds must be examined by a suitable nondestructive testing method to ensure that welds are free from cracks or other detrimental defects."

§ 179.400–8 [Amended]

12. In § 179.400–8, the formula in paragraph (c) is corrected to read as follows:

$t = [PL(3 + \sqrt{(L/R)})]/(8SE)$

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document (1) will not result in a "major rule" under the terms of Executive Order 12291, (2) is not a significant regulation under DOT's regulatory policy and procedures (44 FR 11034), and (3) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). The regulatory evaluation and environmental assessment is available for review in the docket.

Issued in Washington, D.C. October 1, 1984.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84–27735 Filed 10–23–84; 8:45 am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 49, No. 207
Wednesday, October 24, 1984

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-A62-R03]

Milk in the Middle Atlantic Marketing Area; Emergency Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This partial final decision adopts a temporary amendment to the Middle Atlantic milk order's base plan provisions on an emergency basis. It provides that a dairy farmer's eligible deliveries to plants regulated under other Federal orders during the 1984 base-forming period of August–December be counted along with his/her deliveries of producer milk in computing the producer's base.

The change is based on evidence presented at a public hearing held on September 13, 1984, in Alexandria, Virginia. The amendment was proposed by a cooperative association. It was supported by a federation of five cooperatives which includes proponent and represents a substantial majority of the producers who supply milk to the market.

The amendment is needed to reflect current marketing conditions and to assure orderly marketing in view of the critically short milk supply situation that exists primarily in the Southeast.

Because of the limited time available to complete the rulemaking procedures, a recommended decision and the opportunity to file exceptions thereto have been omitted. Cooperative associations will be polled to determine producer approval of the amended order.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued August 30, 1984; published September 6, 1984 (49 FR 35100).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing was held, 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 (7 CFR Part 900), at Alexandria, Virginia, on September 13, 1984. Notice of such hearing was issued on August 30, 1984, and published September 6, 1984 (49 FR 35100).

Interested parties were given until September 19, 1984, to file post-hearing briefs on proposal 1 as published in the notice of hearing. Such persons also were invited to comment on whether this proposal should be considered on an expedited basis. No briefs or comments were received.

The hearing reopened an earlier joint hearing convened on July 19, 1983, which primarily involved consideration of the expansion of the Middle Atlantic and New York-New Jersey marketing areas. That hearing record was reopened for the limited purpose of receiving additional evidence with respect to the economic and marketing conditions which relate to the computation of a producer's base and the pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.

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

1. Computation of a producer's base.
2. Pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.
3. Whether emergency marketing conditions exist to such an extent that the omission of a recommended decision and the opportunity to file written exceptions thereto are warranted.

This decision deals only with issues 1 and 3. The remaining issue 2 is reserved for a later decision.

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. Computation of a Producer's Base

The order's base plan provisions should be amended temporarily for the 1984 base-forming period of August through December. In such months, a dairy farmer's eligible deliveries of milk directly from the farm to plants regulated under other Federal orders where it is pooled and priced, would be included along with such person's deliveries of producer milk under this order in computing the producer's base.

Under the present base plan provisions, a producer's base reflects only his/her deliveries of producer milk under this order.

Since a dairy farmer's deliveries that are producer milk under another Federal order do not count toward the person's established base under the Middle Atlantic order, producers are reluctant to allow their milk to be delivered to other order plants during the base-forming period. In view of this factor and the reduced milk supply situation in the country generally and the Southeast particularly, Maryland and Virginia Milk Producers' Association, Inc. (MD. & VA.), proposed a temporary change this year in the computation of a producer's base.

The witness for proponent cooperative contended that an emergency amendment to the order's base plan is needed so that the market's reserve milk supplies could be made available to plants regulated under other Federal orders here local milk supplies are not presently adequate to meet the needs of the fluid market. He testified that unless the order is modified, the individual producers involved could be penalized under the base plan when their milk is delivered to such plants.

In support of the proposal, the witness for proponent stated that several markets in the southeast region

extending from Virginia to Florida have been short of milk since mid-June. Since that time, it has been necessary to import up to 126 loads of milk per week from other areas, some as far away as Wisconsin, to furnish the needs of bottling plants located in that area. MD. & VA. has been in a position to ship some reserve milk to these deficit areas to help alleviate the short supply situation. This presented no problem for the cooperative until the current base-forming period began on August 1.

Proponent's witness further testified that under the existing provisions it would be almost impossible for his association to continue making these deliveries without adversely affecting the bases of its individual member-producers whose milk was so moved. He stated that a producer does not earn a full base if less than 120 days of his milk production is received as producer milk during the base-forming period. In prior years when milk supplies were more plentiful and considerably fewer shipments to other markets were needed, it was possible for the cooperative to make its extra milk available and yet establish full bases for all of its producers. By taking advantage of the provision which allows a producer to be off the market for up to 33 days without a reduction in his base and/or by shifting the routes of producers whose milk was temporarily assigned to the other market, in the past the cooperative was able to avoid any adverse impact on the bases of its producers, he indicated.

Because of the greater volumes of milk demanded by the other markets this year, proponent's witness estimated that about 10 percent of its member-producers would only earn partial bases during the 1984 base-forming period unless its proposal is adopted. He testified that such situations would not only adversely affect the bases of its individual member-producers but would result in a further negative impact on the cooperative.

The record shows that the proponent cooperative delivered more than 13 million pounds of milk directly from the farms of member-producers to markets in the Southeast during August. Proponent's witness testified that these deliveries were made by dairy farmers who are regularly associated with the Middle Atlantic order. He also stated that the present downturn in milk production is expected to continue through the end of the year and that additional quantities of milk will need to be shipped to such markets.

The temporary change in the base plan provisions proposed by MD. & VA. should be adopted. Pennmarva Dairymen's Federation, a federation of five cooperatives which includes MD. & VA. and represents a substantial majority of the producers supplying milk for the market, supported the proposal and urged its application at the earliest practical date. A spokesman for another member-cooperative of the aforementioned federation (Inter-State Milk Producers' Cooperative) offered no testimony on the proposal at the hearing but offered a statement of counsel supporting adoption of the amendment requested by MD. & VA. Also, a representative for the Ad Hoc Federal Order Committee, representing several major handlers operating under the Middle Atlantic and New York-New Jersey orders, presented a statement of position on behalf of such handlers at the hearing. It indicated that such handlers have no objection to the proposal.

There was no opposition to the proposed amendment. No briefs were received in connection with this issue. Such a modification in the method of computing the bases of producers this year appears to be appropriate in view of the current emergency milk supply situation.

The record data indicate that some of the Federal order markets in the Southeast are experiencing significant production decreases. It shows that producer receipts under some of the orders included in that region are down more than 15 percent from last year. The record also indicates that during the months of June through December each year some supplemental milk is needed annually to furnish the fluid requirements of handlers in that area. However, because of several factors affecting milk production, the shortfalls in certain areas have been much more dramatic this year.

Under the base plan amendment adopted herein, the milk of a dairy farmer who is regularly associated with this market could be pooled and priced under another Federal milk order during the 1984 base-forming period without jeopardizing such producer's opportunity to earn a full base under the Middle Atlantic order. It would be unreasonble to assign a reduced base to a dairy farmer whose milk has been regularly associated with this market and is delivered temporarily to another Federal order market that is experiencing a shortage of milk for fluid purposes. It would be equally inappropriate to assign the cooperative's producers a lower portion of the total base milk in the pool and further burden the association with making up the difference to pay its producers whose milk is so moved. In such instances, the dairy farmers involved are providing a service which benefits the entire Federal order program.

When the market's reserve milk supplies are moved to markets where a shortage exists, benefits result in both the receiving market and the shipping market. Producers under the Middle Atlantic order gain from a higher Class I utilization percentage for the market's lower producer milk supplies. For instance, in July when proponent delivered almost six million pounds of milk to markets in the Southeast, Class I use of producer milk under the Middle Atlantic order averaged 48 percent compared with 43 percent for the same month a year earlier. This happens because a portion of the order's reserve milk supplies (which would be priced in Class II) are delivered to the higher-valued fluid outlets.

On the other hand, consumers in the receiving market benefit because the market's short milk supply situation is alleviated. Also, the cost of transporting the milk to Florida, for example, from the Middle Atlantic milkshed would be considerably less than moving it there from the Upper Midwest. Additionally, it is logical to assume that the milk received from such closer source will tend to assure a higher quality product.

Proponent acknowledged that producer milk status could be maintained on the milk the cooperative delivers to such deficit markets without adversely affecting the bases of its member-producers by first receiving the milk of such dairy farmers at its supply plant and then transferring it to the plant regulated under the other order. Moving milk to an intermediate plant where it is unloaded and received simply to maintain pool status on the milk and assure its inclusion in a producer's base computation and then reloading the milk and delivering it to a plant where the milk is actually needed results in inefficient milk marketing. Such practice result in considerably higher milk hauling costs and extra plant handling. Also, the additional pumping of the milk at the intermediate plant causes the quality to deteriorate. Accordingly, the order should be amended to allow handlers the flexibility to move the milk directly from the producer's farm by diversion when it is most efficient to do so and to count such deliveries in computing the producer's base for 1984.

This change is not expected to jeopardize the availability of milk at distributing plants regulated under the Middle Atlantic order. As already cited, in July 1984 when proponent delivered almost six million pounds of milk to

such deficit areas, the Class I use of the market's producer milk was only 48 percent. Hence, the overall supply situation for this market during the remainder of this year should be adequate to accommodate this market's fluid needs and to make any excess available to Federal order areas experiencing deficits.

The integrity of regulation will be safeguarded during the time that this temporary amendment is effective because the pooling and pricing of the milk so moved will remain unchanged. In addition, only those dairy farmer deliveries that are eligible to be diverted as producer milk under the order would be included in the computation of a producer's base. This maintains the association of such dairy farmer's milk with the Middle Atlantic market even though the producer's milk is subject to pricing and pooling under another Federal milk order during this temporary emergency marketing situation.

Accordingly, during the 1984 base-forming period, all of a dairy farmer's eligible milk deliveries, which are priced and pooled under another Federal order(s), would be included with such person's deliveries of producer milk under this order in the computation of a producer's base. This change will facilitate the movement of milk to other Federal order markets where a shortage of milk is expected during the fall and winter months this year.

During the time of the anticipated shortage, milk should be encouraged to move throughout the Federal order system to plants where it is needed for fluid purposes. The temporary base plan amendment adopted herein will facilitate such milk movements without adversely impacting on the base computations of the individual producers involved during the 1984 base-forming period.

Producers described in paragraphs (b) through (f) of § 1004.92 who have not been regular suppliers of milk for the Middle Atlantic market such as new producers and producers who are associated with this and another Federal order market and dairy farmers who become attached to the market because the plant receiving their milk becomes a pool plant would establish their bases during the 1984 base-forming period in the same manner as they have in the past. There was no proposal to change the computation of bases for such producers. Accordingly, no change is provided.

3. Whether Emergency Marketing Conditions Exist to Such an Extent That the Omission of a Recommended Decision and the Opportunity To File Written Exceptions Thereto Are Warranted

The due and timely execution of the functions of the Secretary under the Act require the omission of a recommended decision and the opportunity for written exceptions thereto with respect to issue 1. The orderly marketing of milk under the Middle Atlantic order requires that the attached order, as amended, be made effective as soon as possible.

The hearing notice invited interested parties to present testimony to show the existence of emergency marketing conditions with respect to both proposals which were published in the hearing notice. Proponent of issue 1 asked that the base plan proposal be considered on an expedited basis so that the order can be amended quickly in this regard.

No testimony concerning evidence of emergency marketing conditions was presented at the hearing with respect to issue 2. Because of this, a separate later briefing date was set by the Administrative Law Judge on this issue. Accordingly, that issue will be dealt with in a later decision and the normal handling procedures will be followed.

Emergency marketing conditions warrant the omission of a recommended decision and the opportunity for interested parties to file written exceptions thereto with respect to issue 1. Handlers who are moving the milk and producers who are establishing their bases and whose milk is being moved to other markets need to know specifically which deliveries will count toward the bases established by producers during the current base-forming period (August-December) so that the dairy farmers and their marketing agents (cooperatives) may conduct their business operations more effectively. If this change is not made quickly, disorderly conditions could result. Accordingly, a recommended decision and the opportunity to file exceptions thereto with respect to issue 1 are omitted on the basis that the due and timely execution of the Secretary's duties compels such emergency action.

Rulings on Proposed Findings and Conclusions

None were received.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Middle Atlantic order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those 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.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Middle Atlantic marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

July 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Middle Atlantic marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were

engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on October 17, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order [1] Amending the Order, Regulating the Handling of Milk in the Middle Atlantic Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings

A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Middle Atlantic marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

In § 1004.92, paragraph (a) is revised to read as follows:

§ 1004.92 Computation of base for each producer.

* * * * *

(a) For any producer, except as provided in paragraph (b) through (f) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the immediately proceding months of August through December. However, during the August-December, 1984 base-forming period only, the quantity of milk receipts shall include the total pounds of milk received from such producer: (1) As producer milk by pool handlers; and (2) as dairy farmer milk pooled on some other Federal order(s), which was reported and eligible to be diverted as producer milk pursuant to § 1004.12(d) but is subject to the classification and pricing provisions of such other order(s) issued pursuant to the Act and § 1004.12(f)(4).

* * * * *

[FR Doc. 84-28009 Filed 10-23-84; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 83-005P]

Control of Added Substances and Labeling Requirements for Imported Cured Pork Products

Correction

In FR Doc. 84-26616, beginning on page 39560 in the issue of Tuesday, October 9, 1984, make the following correction: On page 39563, third column, in § 327.23, the fourth line of paragraph (a)(2)(ii) should read "into Group I but does fit into Group".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 84-ASW-43]

Proposed Temporary Restricted Areas, McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish temporary restricted areas in the vicinity of White Sands Missile Range, NM, and Fort Bliss, TX. These areas would be used for joint military exercise BORDER STAR 85 during March 1985. The areas required for this exercise include the airspace within and adjacent to Restricted Areas R-5103, R-5107, R-5109, and R-5111. Federal Airway V-280 would be excluded within the proposed restricted area, R-5103F. This action would prohibit unauthorized flight operations by nonparticipating aircraft within the proposed restricted areas during the time the area is in use by the military.

DATES: Comments must be received on or before December 3, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 84-ASW-43, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreement and marketing orders have been met.