

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
New Hampshire: Farmington, town of, Strafford County.	330147	May 14, 1976, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do.....	Do.
New Hampshire: Hopkinton, town of, Merrimack County.	330116	June 27, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do.....	Do.
Vermont: Barnet, town of, Caledonia County.	500024	Aug. 28, 1974, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do.....	Do.
Vermont: Jamaica, town of, Windham County.	500131	Aug. 7, 1975, Emerg.; May 5, 1981, Reg.; May 17, 1988, Susp.	do.....	Do.
Region III				
Virginia: St. Paul, town of, Wise and Russell County.	515530	June 19, 1970, Emerg.; Dec. 4, 1970, Reg.; May 17, 1988, Susp.	May 17, 1988.....	May 17, 1988.
Region IV				
South Carolina: Hampton, town of, Hampton County.	450100	May 14, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988.....	May 17, 1988.
Tennessee: Pikeville, city of, Bledsoe County.	470011	Sept. 10, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do.....	Do.
Region V				
Michigan: Castleton, township of, Barry County.	260641	Sept. 26, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988.....	May 17, 1988.
Michigan: Vernon, village of, Shiawassee County.	260524	May 28, 1982, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do.....	Do.
Region VI				
Louisiana: Abita Springs, town of, St. Tammany Parish.	220199	July 16, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988.....	May 17, 1988.
New Mexico: Silver City, town of, Grant County.	350022	July 22, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do.....	Do.
New Mexico: Socorro, city of, Socorro County.	350077	Feb. 27, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do.....	Do.
Region X				
Washington: Spokane County, unincorporated areas.	530174	May 30, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988.....	May 17, 1988.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

Issued: April 20, 1988.
[FR Doc. 88-9084 Filed 4-25-88; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6786]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes

the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In

return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the

Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
North Carolina: Robbinsville, town of, Graham County.	370106	Mar. 7, 1988, emergency.....	June 14, 1974.
Illinois: South Wilmington, village of, Grundy County.	171013	Mar. 4, 1988, emergency; Mar. 4, 1988, regular....	Mar. 4, 1988.
Pennsylvania: Eldred, township of, Monroe County.	421887	July 20, 1977, emergency; Feb. 17, 1988, regular; Feb. 17, 1988, suspension; Mar. 1, 1988, reinstatement.	Feb. 17, 1988.
Kentucky: Stamping Ground, city of, Scott County.	210261	Apr. 28, 1976, emergency; Mar. 2, 1981, regular; Feb. 17, 1988, suspension; Mar. 2, 1988, reinstatement.	Mar. 2, 1981.
Pennsylvania: Pittsfield, township of, Warren County.....	422125	Feb. 18, 1976, emergency; Aug. 1, 1987, regular; Aug. 1, 1987, suspension; Mar. 3, 1988, reinstatement.	Aug. 1, 1987.
Standing Stone, township of, Bradford County.	421406	Mar. 9, 1977, emergency; Sept. 18, 1987, regular; Sept. 18, 1987, suspension; Mar. 3, 1988, reinstatement.	Sept. 18, 1987.
Hunker, borough of, Westmoreland County....	420880	Aug. 5, 1980, emergency; Nov. 19, 1986, regular; Nov. 19, 1986, suspension; Mar. 7, 1988, reinstatement.	Nov. 19, 1986.
Georgia: Lawrenceville, city of, Gwinnett County....	130099	Aug. 28, 1974, emergency; May 15, 1980, regular; Feb. 17, 1988, suspension; Mar. 7, 1988, reinstatement.	May 15, 1980.
Tennessee: Collierville, town of, Shelby County....	470263	Sept. 29, 1975, emergency; Sept. 30, 1981, regular; Feb. 4, 1988, suspension; Mar. 4, 1988, reinstatement.	Oct. 1, 1982.
Kentucky: Lawrence County, unincorporated areas.....	210258	Apr. 18, 1985, emergency; Apr. 18, 1985, regular; Feb. 17, 1988, suspension; Mar. 10, 1988, reinstatement.	Apr. 17, 1984.
Russellville, city of, Logan County.....	210150	July 24, 1974, emergency; June 1, 1984, regular; Feb. 17, 1988, suspension; Mar. 10, 1988, reinstatement.	June 1, 1984.
Florida: Atlantis, city of, Palm Beach County.....	120193	Aug. 23, 1974, emergency; Nov. 1, 1978, regular; Feb. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Nov. 1, 1978.
Cedar Grove, town of, Bay County.....	120006	May 16, 1975, emergency; Jan. 25, 1980, regular; Feb. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Jan. 25, 1980.
Montana: Whitehall, town of, Jefferson County.....	300120	May 7, 1975, emergency; Mar. 4, 1988, withdrawn.	May 2, 1975.
Florida: Fort Lauderdale, city of, Broward County....	125105	Nov. 20, 1970, emergency; Nov. 3, 1972, regular; Mar. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Dec. 15, 1982.
Kentucky: Jefferson County, unincorporated areas.	210120	Aug. 20, 1971, emergency; Apr. 16, 1979, regular; Feb. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Nov. 12, 1982.
Florida: Lynn Haven, city of, Bay County.....	120009	Sept. 8, 1974, emergency; June 1, 1977, regular; Mar. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Feb. 19, 1982.
Fernandina Beach, city of, Nassau County.....	120172	Aug. 16, 1974, emergency; Jan. 14, 1977, regular; Feb. 17, 1988, suspension; Mar. 15, 1988, reinstatement.	Apr. 4, 1983.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Pennsylvania: Cooper, township of, Montour County.	421920	Aug. 21, 1974, emergency; Sept. 30, 1987, regular; Sept. 30, 1987, suspension; Mar. 15, 1988, reinstatement.	Sept. 30, 1987.
Virginia: Lancaster County, unincorporated areas.	510084	Nov. 27, 1973, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 15, 1988, reinstatement.	Mar. 4, 1988.
Texas: Harrison County, unincorporated areas	480849	Mar. 18, 1988, emergency.	Sept. 6, 1977.
Mississippi: Smithville, town of, Monroe County	280325	Mar. 16, 1988, emergency; Mar. 16, 1988, regular.	Mar. 16, 1988.
New Hampshire: *Sullivan, town of, Cheshire County.	330233	Dec. 24, 1975, emergency; Apr. 2, 1986, regular; Apr. 2, 1986, suspension; Mar. 17, 1988, reinstatement.	Apr. 2, 1986.
Florida: Gulf Breeze, city of, Santa Rosa County.	120275	July 10, 1970, emergency; Sept. 1, 1977, regular; Mar. 4, 1988, suspension; Mar. 18, 1988, reinstatement.	Nov. 1, 1985.
North Carolina: Washington County, unincorporated areas.	370247	Jan. 24, 1975, emergency; Aug. 19, 1985, regular; Feb. 4, 1988, suspension; Mar. 18, 1988, reinstatement.	Aug. 19, 1985.
Pennsylvania: Ulster, township of, Bradford County.	421218	July 29, 1975, emergency; Sept. 18, 1987, regular; Sept. 18, 1987, suspension; Mar. 18, 1988, reinstatement.	Sept. 18, 1987.
North Carolina: Pender County, unincorporated areas.	370344	June 28, 1977, emergency; Feb. 15, 1985, regular; Mar. 4, 1988, suspension; Mar. 21, 1988, reinstatement.	Feb. 15, 1985.
Tennessee: Henning, town of, Lauderdale County	470259	July 21, 1986, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Mar. 4, 1988.
Loudon County, unincorporated areas	470107	May 30, 1973, emergency; Aug. 15, 1978, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Aug. 15, 1978.
North Carolina: Creswell, town of, Washington County.	370443	Jan. 24, 1975, emergency; Aug. 19, 1985, regular; Feb. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Feb. 4, 1987.
Florida: Flagler County, unincorporated areas	120085	Sept. 17, 1975, emergency; Feb. 5, 1986, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Feb. 5, 1986.
Oklahoma: *Kinta, city of, Haskell County	400071	Oct. 4, 1976, emergency; Aug. 1, 1987, regular; Aug. 1, 1987, suspension; Mar. 24, 1988, reinstatement.	Aug. 1, 1987.
Texas: *Jim Hogg County, unincorporated areas	481081	Nov. 14, 1975, emergency; Nov. 1, 1987, regular; Dec. 17, 1987, suspension; Mar. 24, 1988, reinstatement.	Nov. 1, 1987.
Pennsylvania: Limestone, township of, Union County	422105	Feb. 13, 1975, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Mar. 4, 1988.
Hamilton, township of, Monroe County	421888	Mar. 31, 1978, emergency; Feb. 4, 1988, regular; Feb. 4, 1988, suspension; Mar. 22, 1988, reinstatement.	Feb. 4, 1988.
Montana: Wibaux, town of, Wibaux County	300084	Sept. 26, 1974, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 25, 1988, reinstatement.	Mar. 4, 1988.
Pennsylvania: Dawson, borough of, Fayette County	420460	July 23, 1975, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Do.
Madison, township of, Clarion County	422370	Jan. 16, 1976, emergency; Sept. 30, 1987, regular; Sept. 30, 1987, suspension; Mar. 24, 1988, reinstatement.	Sept. 30, 1987.
Lower Tyrone, township of, Fayette County	421630	May 16, 1977, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Mar. 4, 1988.
North Carolina: Crossnore, town of, Avery County.	370287	Jan. 14, 1980, emergency; Mar. 16, 1988, suspension; Mar. 17, 1988, reinstatement.	Aug. 5, 1977.
Virginia: Lebanon, town of, Russell County	510222	Jan. 24, 1975, emergency; Jan. 16, 1987, regular; Jan. 16, 1987, suspension; Mar. 28, 1988, reinstatement.	Jan. 16, 1987.
West Virginia: Worthington, town of, Marion County.	540106	May 13, 1975, emergency; Mar. 16, 1988, regular; Mar. 16, 1988, suspension; Mar. 30, 1988, reinstatement.	Mar. 16, 1988.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Kentucky:			
St. Matthews, city of, Jefferson County	210123	Dec. 3, 1971, emergency; Mar. 5, 1976, regular; Feb. 4, 1988, suspension; Mar. 31, 1988, reinstatement.	June 25, 1982.
Jeffersonton, city of, Jefferson County	210121	Dec. 23, 1971, emergency; Mar. 5, 1976, regular; Feb. 4, 1988, suspension; Mar. 31, 1988, reinstatement.	Mar. 5, 1976.
Tennessee:			
Obion, town of, Obion County	470253	Aug. 11, 1975, emergency; Mar. 16, 1981, regular; Mar. 4, 1988, suspension; Mar. 31, 1988, reinstatement.	Mar. 16, 1981.
Oklahoma:			
¹ Ramona, city of, Washington County	400222	Apr. 16, 1976, emergency; June 2, 1986, regular; Mar. 31, 1988, suspension; Mar. 31, 1988, reinstatement.	Feb. 1, 1988.
Louisiana:			
Leesville, city of, Vernon Parish	220229	Oct. 17, 1974, emergency; Jan. 17, 1986, regular; Jan. 17, 1986, suspension; Mar. 18, 1988, reinstatement.	Jan. 17, 1986.
Region III—Regular Conversions			
Pennsylvania:			
Bushkill, township of, Northampton County	421929	Mar. 4, 1988, suspension withdrawn	Mar. 4, 1988.
Conewago, township of, Adams County	421248	do.....	Do.
Dreher, township of, Wayne County	422164	do.....	Do.
Hartley, township of, Union County	422102	do.....	Do.
Lehigh, township of, Wayne County	422167	do.....	Do.
Mifflinburg, borough of, Union County	420832	do.....	Do.
Saville, township of, Perry County	421956	do.....	Do.
West Pennsboro, township of, Cumberland County	421590	do.....	Do.
West Virginia:			
Bridgeport, city of, Harrison County	540055	do.....	Do.
Fayette County, unincorporated areas	540026	do.....	Do.
Lost Creek, town of, Harrison County	540057	do.....	Do.
Lumberport, town of, Harrison County	540058	do.....	Do.
Region IV			
Georgia: Rockmart, city of, Polk County	130154	do.....	Do.
North Carolina:			
Louisburg, town of, Franklin County	370098	do.....	Do.
Southern Pines, town of, Moore County	370338	do.....	Do.
Tennessee:			
Clifton, city of, Wayne County	470200	do.....	Do.
Region V			
Illinois: Sugar Grove, village of, Kane County	170333	do.....	Do.
Ohio: Crooksville, village of, Perry County	390441	do.....	Do.
Region III—Regular Conversions			
Pennsylvania:			
Center, township of, Snyder County	422591	Mar. 16, 1988, suspension withdrawn	Mar. 16, 1988.
Lamar, township of, Clinton County	420327	do.....	Do.
Lower Frankfort, township of, Cumberland County	421018	do.....	Do.
Perry, township of, Snyder County	422038	do.....	Do.
Spring, township of, Snyder County	422039	do.....	Do.
Virginia:			
Abingdon, town of, Washington County	510169	do.....	Do.
Damascus, town of, Washington County	510170	do.....	Do.
Glade Spring, town of, Washington County	510320	do.....	Do.
Russell County, unincorporated areas	510317	do.....	Do.
Washington County, unincorporated areas	510168	do.....	Do.
West Virginia:			
Barrackville, town of, Marion County	540098	do.....	Do.
Fairview, town of, Marion County	540100	do.....	Do.
Farmington, town of, Marion County	540101	do.....	Do.
Monongah, town of, Marion County	540105	do.....	Do.
Rivesville, town of, Marion County	540105	do.....	Do.
Shinnston, city of, Harrison County	540060	do.....	Do.
Region IV—Regular Conversions			
Florida: Lake Wales, city of, Polk County	120390	do.....	Do.
Mississippi:			
Aberdeen, city of, Monroe County	280115	do.....	Do.
Monroe County, unincorporated areas	280275	do.....	Do.
Region V			
Michigan: Cheboygan, city of, Cheboygan County	260058	do.....	Do.
Minnesota:			
Renville County, unincorporated areas	270634	do.....	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region VI			
Louisiana:			
Broussard, town of, Lafayette Parish	220102	do.....	Do.
Breaux Bridge, town of, St. Martin Parish	220180	do.....	Do.
Texas: Jonestown, city of, Travis County			
	481597	do.....	Do.
Region IX—Regular Conversions			
Arizona: Prescott, city of, Yavapai County	040098	do.....	Do.
California: Napa, city of, Napa County	060207	do.....	Do.

¹ The City of Ramona, Oklahoma is being reinstated into the Regular Program. This is the initial Regular Program entry.

*Minimal

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

Issued: April 20, 1988.

[FR Doc. 88-9083 Filed 4-25-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-263; RM-5676]

Radio Broadcasting Services; Biddeford, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 232B1 for Channel 232A at Biddeford, Maine, in response to a petition filed by WYJY, Inc. We shall also modify the license of Station WYJY-FM to specify operation on Channel 232B1 in lieu of Channel 232A. Canadian concurrence has been obtained for this allotment. The coordinates for Channel 232B1 are 43-29-30 and 70-27-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-263, adopted March 8, 1988, and released April 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine is amended by removing channel 232A and adding Channel 232B1 at Biddeford.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-8073 Filed 4-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 86-112; FCC 88-125]

FM Broadcast Translator Stations and FM Broadcast Booster Stations

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: Current rules restrict noncommercial educational FM stations to rebroadcast of signals received directly over the air from their primary station or another translator. The Commission is amending these translator rules to permit noncommercial educational FM stations to use satellite, microwave or any technical means deemed suitable by the licensee, to deliver signals to translator stations assigned to reserved channels (200-220) and co-owned by the primary station. The Commission believes this rule change will facilitate the delivery of higher quality FM signals by noncommercial educational FM radio stations to their owned and operated translators, and will improve service to remote and underserved regions. The rule amendment will not alter the secondary nature of translator service,

whereby in any conflicts that arise with a primary broadcast station, the translator licensee is obligated to resolve the conflicts or cease operation of the translator.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Docket No. 86-112, FCC 88-126, adopted March 24, 1988, and released April 15, 1988. The full text of this Commission decision, including the amendments to the rules, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. The FM translator service was instituted in 1970 as a means to supplement the primary service provided by full facility FM stations. While the Commission recognized the benefits which would be derived from the translator service, it was concerned about the use of translators as a means to expand competitively the service area of a primary FM station. Consistent with these objectives and concerns, the Commission authorized FM translators for the specific and limited purpose of providing FM radio service to underserved areas, extending additional FM service to underserved areas, and improving service to areas within the predicted 1 mV/m contours of a primary FM station. As part of these rules, the Commission restricted both commercial and noncommercial FM translators to

rebroadcast of signals received directly over the air from their primary station or another translator.

2. In the *Notice of Proposed Rule Making (Notice)* in MM Docket No. 86-112, 51 FR 15026, April 22, 1986, the Commission proposed amendments to its rules to allow noncommercial educational FM stations to deliver signals by satellite, microwave, or any technical means deemed suitable by the licensee, to translator stations that are assigned to reserved channels (channels 200-220) and that are owned and operated by the primary station. This *Notice* was initiated in response to a petition for rule making filed by the Moody Bible Institute of Chicago, Inc. Twenty-two parties filed formal comments in this proceeding.

3. On the basis of the record developed in response to the *Notice*, the Commission concludes that authorizing use of alternative signal delivery methods by noncommercial educational FM stations to their co-owned translators assigned to reserved channels would serve the public interest by facilitating the rebroadcast of higher quality FM signals by such translators to underserved and remote areas. The existing restriction on the means of signal delivery limits the potential service areas that can be reached by primary noncommercial educational FM stations. In this respect, the range of line-of-sight reception of over-the-air signals with normal equipment is limited in most cases to areas not much beyond the predicted service area of the primary station. Although translators may be used to provide service at greater distances if the primary signal is relayed through other translators, the areas that can be reached through this method of signal delivery are limited to places within the range of other translators, and the signals relayed generally suffer some deterioration in quality. The revised rules will serve the public interest by facilitating the delivery of higher quality noncommercial educational FM programming to areas currently unable to receive satisfactory FM service because of distance or intervening terrain obstructions.

4. The rule changes adopted herein will allow improved service but will not change the fundamental nature of the translator service. In this respect, noncommercial educational FM translators will still be secondary, restricted to the rebroadcast of a primary station. Licensees of

noncommercial educational FM stations also are restricted from owning translators beyond their 1mV/m contour and within the 1mV/m contour of another commercial station assigned to a different principle community. Moreover, the new rules will in no way alter the secondary status of noncommercial FM translators and the requirement that in conflicts with full service stations, the translator operator is obligated to resolve the conflict or cease operation of the translator.

5. A general freeze has been imposed on new translator applications in conjunction with our comprehensive review of our FM translator policy. See *Notice of Inquiry* in MM Docket No. 88-140, FCC 88-120, adopted March 24, 1988. However, an exception to the freeze has been provided for applications for new noncommercial educational FM translators assigned to reserved channels in order to allow implementation of the signal delivery rule change made herein.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, it is certified that the adopted rule will not have a significant impact on a substantial number of small entities because the limited nature of the relaxation of the signal delivery rule change is not expected to result in a significant number of new noncommercial educational translators and therefore is not expected to alter the availability of opportunities for local FM noncommercial FM stations.

7. The rule changes adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified forms, information collection and/or record keeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours imposed on the public.

8. Accordingly, it is ordered, that pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 74 of the Commission's Rules and Regulations IS AMENDED as set forth below. It is further ordered that applications for use of alternative delivery technologies in conjunction with noncommercial educational FM translator stations operating on reserved channels, owned and operated by the licensee of the primary section, will be accepted consistent with the interim procedures set forth herein.

List of Subjects in 47 CFR Part 74

FM Broadcast Translator Stations and FM Broadcast Booster Stations.

Part 74 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 74.1231 is amended by revising paragraph (b) to read as follows:

§ 74.1231 Purpose and permissible service.

(b) Except as set forth in paragraphs (f) and (g) of this section, an FM translator may be used only for the purpose of retransmitting the signals of a primary FM broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, a noncommercial educational FM translator station operating on a reserved channel (Channel 200-220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and microwave facilities.

3. 47 CFR 74.1250 is amended by revising paragraph (a) to read as follows:

§ 74.1250 Transmitters and associated equipment.

(a) FM translator and booster transmitting apparatus used by stations authorized under the provisions of this subpart may only use transmitting apparatus that has been type accepted for such use in accordance with Subpart J of Part 2. Translator stations authorized for transmitter output power of 10 watts also may use FM broadcast transmitters notified or type accepted to operate with an output power not exceeding 10 watts under the provisions of Part 73 of the Rules for broadcast stations.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9110 Filed 4-25-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 53, No. 80

Tuesday, April 26, 1988

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 Parts 1033 and 1046

[Docket Nos. AO-166-A57 and AO-123-A58]

Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Others

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts certain changes in the pooling provisions of the Ohio Valley and Louisville-Lexington-Evansville milk orders based on industry proposals considered at a public hearing held June 30-July 1, 1987. As adopted, a pool distributing plant physically located in the Louisville-Lexington-Evansville marketing area would be regulated under that order irrespective of the market in which the plant has most of its fluid milk products distribution.

The decision also adopts another change in the Louisville-Lexington-Evansville order only. This change slightly modifies the method for accounting for excess diversions to nonpool plants. These changes are needed to reflect current marketing conditions and to insure orderly marketing.

In both markets, cooperative associations will be polled to determine whether producers who supplied milk during December 1987 favor issuance of the orders as amended.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

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.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

This action changes the current regulatory status of a pool distributing plant that is located in the Louisville-Lexington-Evansville marketing area but is regulated by the Ohio Valley order because a greater portion of its fluid milk products distribution is in the latter order's marketing area. It would regulate such plant under the Louisville-Lexington-Evansville order. Such action is expected to equate the cost of raw milk supplies to the pool plant so situated with its principal competition. The economic impact of such action will be to increase returns to dairy farmers whose milk will be pooled under the Louisville-Lexington-Evansville order while slightly reducing returns to dairy farmers whose milk will continue to be pooled under the Ohio Valley order. The overall economic impact of the action is expected to be minimal.

Prior documents in this proceeding:
Notice of Hearing: Issued June 15, 1987; published June 19, 1987 (52 FR 23306).

Recommended Decision: Issued January 7, 1988; published January 14, 1988 (53 FR 907).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and orders regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rule of practices (7 CFR Part 900), at Louisville, Kentucky, on June 30-July 1, 1987. Notice of such hearing was issued June 15, 1987 and published June 19, 1987 (52 FR 23306).

Upon the basis of the evidence introduced at the hearing and the record

thereof, the Administrator, Agricultural Marketing Service, on January 7, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, except that three new paragraphs are added at the end of issue 1.

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

1. Regulation of a distributing plant physically located in the Louisville-Lexington-Evansville marketing area but currently regulated by the Ohio Valley milk order.

2. Diversion of producer milk under the Louisville order.

3. Pool plant qualification requirements for a balancing plant operated by a cooperative association and regulated by the Ohio Valley order.

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. Regulation of a Distributing Plant Physically Located in the Louisville-Lexington-Evansville Marketing Area but Currently Regulated by the Ohio Valley Milk Order

Louisville-Lexington-Evansville order (Louisville order) should be amended to provide that a distributing plant which meets the pooling standards of the Louisville order and one or more other Federal orders and which is located in the Louisville order's marketing area shall be a pool plant under the Louisville order irrespective of the quantity of fluid milk products distributed in any other Federal order market. However, such pool plant status shall be accorded only as long as the Louisville order's Class I price at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition.

Presently, when a distributing plant qualifies for pooling under the Louisville order and another order, it is regulated

in the market in which it has the greater route sales.

The "lock-in" provision adopted herein for the Louisville order cannot achieve its intended purpose without a corollary change in the pooling standards of the Ohio Valley order. Thus, the Ohio Valley order should provide that any plant with route sales in the Ohio Valley marketing area shall be exempt from full regulation under that order, even though it has more sales in the Ohio Valley market than in the other market, if the plant is subject to full regulation under the other order.

Both Dairymen, Inc. (DI), and Milk Marketing Inc. (MMI), proposed (proposals 1 and 2 as listed in the Notice of Hearing) that a distributing plant that is physically located in the Louisville order's marketing area (Order 46) should be regulated by that order irrespective of the quantity of such plant's route disposition in any other Federal order marketing area. Proposal No. 1 would amend Order 46 by locking in such a plant under the order and proposal No. 2 is intended to amend the Ohio Valley order (Order 33) by releasing from regulation such a plant even though such plant may have more fluid milk sales in the Order 33 area than in the Order 46 area.

A witness for DI stated that this action is necessary in order to minimize disruptive market conditions in the Kentucky supply area. The witness indicated that the proposal would only affect the Kroger Company's (Kroger) distributing plant located in Clark County, Kentucky (Order 46 marketing area), but currently regulated by Order 33. He said that the milk procurement and sales patterns of the Kroger plant establish a primary association of the plant with the Order 46 market.

The DI witness testified that the traditional method of pooling a distributing plant has always been on the basis of the market in which the plant has the most sales. The justification for this method, he said, was to ensure that all handlers having the major portion of their sales in the same order area were subject to the same minimum order prices and other regulatory provisions. He said that this principle rested on an assumption that such competing plants would be located in the same geographic area.

Also, the witness for DI said that the traditional method of pooling fluid milk plants has become outdated because of large processing plants, such as chain store plants, that have sales over wide geographical areas. The proposal, he said, better serves the principle of trying to assure that all handlers competing for milk procurement and sales in an order

area are subject to the same price as their competition. He indicated the proposal would regulate a distributing plant under the order for the marketing area where it is physically located even though its route distribution was greater in another Federal order's marketing area.

The spokesman for DI said that producers supplying the Kroger plant are located within the same geographic area as producers who supply Order 46 plants and to some extent producers who supply plants regulated under the Tennessee Valley, Nashville, and Alabama-West Florida orders. He said that this proposal would minimize any blend price inequities which may occur between producers located within this same geographic supply area because a distributing plant would be regulated within the same area from which it procures its milk supply. Producers, he says, who supply other Federal order plants located in the same general area are receiving significantly different blend prices.

A witness for MMI also testified in support of proposals 1 and 2. He said that MMI cannot service the Kroger plant at competitive prices and that this problem is caused by the difference between the Order 33 blend price and blend prices in markets to the south. He stated that in order for MMI to make their members' pay prices competitive, MMI has found it necessary to charge the Kroger plant at Winchester a surcharge of 15 cents on all the milk that Kroger purchases. The MMI witness stated that the 15-cent surcharge to Kroger has helped MMI maintain a competitive position in the procurement area and that they have used that surcharge to pay for such things as subsidies to milk haulers, over-order premiums to MMI's members, and to pay extra premiums in certain competitive areas.

The spokesman for MMI said that a higher blend price is needed at the Winchester plant because the Order 33 blend price and the normal over-order charge is not sufficient to assure an adequate supply of milk at that location. He said that Federal order prices should be the prime determinant in the assurance of adequate supplies and it should not be the responsibility of suppliers to selectively determine that certain plants should pay higher over-order charges than other plants with the same Federal order Class I price. The blend price must be increased, he said, by either having a higher Class I price at that location or having the plant regulated by another market with a higher percentage of Class I utilization.

A witness for the Kroger Company (Kroger) testified in support of these proposals. The Kroger witness said that for the first 5 months of 1987, the Winchester plant's Class I sales in the Order 46 marketing area averaged more than 33 percent of its total fluid milk sales and that its fluid milk sales in the Order 33 marketing area averaged less than 50 percent of its total fluid milk sales. He said that the total in-area packaged Class I sales for Order 46, its sales represent about 16 percent of the total market and that of the total in-area packaged Class I sales for Order 33, its sales represent about 8 percent of the total. In addition, he said, that when comparing its Class I sales in each of the two order areas for the first 5 months of 1987 with the same period of 1986, sales in the Order 33 area have declined and sales in the Order 46 area have increased.

The spokesman for Kroger said that because of the recent increases in the Class I differentials in the southern markets, Winchester has not been as attractive a market outlet as before. This, he said, has contributed to the need for Kroger to pay, beginning in September 1986, an additional 15-cent per hundredweight surcharge over the regular premium price and that this surcharge amounted to approximately \$439,000 for the first five months of 1987.

The Kroger witness said that these proposals would make the Winchester plant more competitive with other plants in the procurement of milk. In addition, he said that the lock-in proposals would equalize producers' pay prices under the order in the Winchester plant's procurement area and should eliminate the need for the 15-cent surcharge.

A representative for Huntington Interstate Milk Producers Association (Huntington) also testified in support of the lock-in proposals. He said that Huntington supplies Order 33 milk plants including the Winchester plant. In recent weeks, he said, Huntington had lost a few members because a supply plant at Maysville, Kentucky, was offering these producers the Order 46 weighted average price, which is higher than the Order 33 blend price.

A representative for the National Farmers Organization (NFO), which has member producers on both the Order 33 and Order 46 markets, testified in opposition to the lock-in proposals. Exhibits that were introduced by NFO showed that if the Kroger plant were to be pooled under Order 46, that order's blend price would have increased at least 11 cents and as much as 18 cents for the first 5 months of 1987. In addition, the exhibits showed that the

blend price on Order 33 for this same period would have decreased between 6 and 9 cents.

The witness for NFO said that the proposals would have the effect of penalizing producers whose milk is pooled on Order 33 in order to save some money for the Kroger plant at Winchester. The NFO witness said that the difference in blend prices for the two markets could be as much as 49 cents. He said that such disparity in blend prices between these two close-together regulated markets will create inequities among producers within the same milk shed. Furthermore, he said, the base-excess plan of Order 46 will create additional friction with Order 33 producers.

While acknowledging the uniqueness of the Kroger problem, the representative of NFO held that a plant should be regulated under the Federal order for the area in which it has the most sales. It was the position that producers in the market in which the plant has the greater proportion of its sales have a right to share in the Class I sales associated with that plant.

A brief was filed by the Louis Trauth Dairy, Inc. (Trauth) in opposition to proposals 1 and 2. In this Order 33 handler's view, the proposals represent a radical departure from the policies established for regulating plants under marketing orders. Its brief asserts that the proponents have not met their burden of proof and that the record shows that milk is regularly diverted away from the Winchester plant, thereby indicating that plant does not have a supply problem.

The testimony presented at the hearing indicates that under current marketing conditions the lock-in provision for the Louisville order as proposed by DI and MMI would apply only to Kroger's distributing plant at Winchester, Kentucky.

The adoption of the proposal is warranted because of special circumstances surrounding the operation of the Winchester plant. The plant is located in the marketing area of the Louisville order. It began operating in November 1982 and during this month the plant was a pool distributing plant under the Ohio Valley order. From December 1982 through March 1983, it was a pool city plant (pool distributing plant) under the Louisville order. Since then, the plant has continued to be pooled under the Ohio Valley order.¹

The Winchester plant distributes fluid milk products in five Federal order markets and in unregulated areas of West Virginia and Kentucky. Most of its sales, however, are concentrated in two markets: the Ohio Valley market and the Louisville market. Data introduced into the record show that during the January-May 1987 period the Kroger plant had nearly 50 percent of its Class I distribution in the Ohio Valley market, about 34 percent in the Louisville market and about 16 percent in all other areas, including the Eastern Ohio-Western Pennsylvania, Tennessee Valley and Indiana Federal order markets.

The entire raw milk supply for the Kroger plant is obtained from DI and MMI (which includes milk of Huntington Interstate Milk Producers) and comes from producers principally located in Kentucky. The plant receives milk directly from the farms of producers and incidental or supplemental supplies from supply plants operated by MMI. Most the plant's milk supply is obtained from producers located in the same geographical area as producers supplying handlers regulated by the Louisville order and other orders south and east of the plant's location. The record indicates that in at least 18 Kentucky counties there are producers who supply the Kroger plant as well as other producers in the same counties that supply plants regulated under the following other orders: Alabama-West Florida, Georgia, Louisville, Nashville, and Tennessee Valley (southern markets).

While the Class I prices under the Louisville and Ohio Valley orders at the Kroger plant's location are identical, the uniform weighted average prices to producers under the Louisville order usually have been higher than the comparable Ohio Valley prices. For example, during the 53-month period from January 1983 through May 1987, the uniform weighted average prices to producers under the Louisville order exceeded the comparable Ohio Valley order's prices during 49 months. The amount of these differences ranged from a low of one cent to a high of 35 cents per hundredweight and averaged 14 cents for the 49 months. A similar situation exists for the Winchester plant in competing for milk supplies with handlers regulated in other southeastern order markets where both Class I prices and uniform prices to producers are substantially higher than such prices under the Ohio Valley order.

As indicated by the record evidence, the higher pay prices available to producers under the Louisville and other southeastern orders in the Kentucky

supply area have created difficulties for the Kroger plant at Winchester in procuring adequate supplies. The principal difficulty cited in this regard was the impact of the present 15-cent per hundredweight additional charge by both DI and MMI on all milk purchases by Kroger. It is evident from the record evidence that this 15-cent charge, which has been in effect since September 1986, was designed to overcome the difficulties of maintaining an adequate supply of milk for the Kroger Winchester plant as a result of producer pay price differences between the two markets in question. Although the record clearly establishes that a higher price is required at this location to attract adequate supplies, the present extra 15-cent charge used for this purpose places the Kroger Company at a competitive disadvantage with other handlers that it competes with for sales.

As noted previously, usually a distributing plant that qualifies for pooling under more than one order during the same month is regulated under the order for the area in which such plant's route distribution is the greatest. This tends to insure that all handlers having their principal sales in a market are subject to the same prices and other regulatory requirements. This condition of pooling a distributing plant is the basis for regulating the Kroger plant under the Ohio Valley order, because a greater quantity of its sales is distributed in such order's marketing area than in any other order marketing area.

The pricing problems affecting the procurement of adequate milk supplies for the Winchester plant, however, are severe enough to override the traditional basis for pooling a distributing plant that qualifies as a pool plant under more than one order during the same month. Under such circumstances, consideration must be given to regulating the Winchester plant in the market in which there is reasonable assurance that it will have available an adequate supply of producer milk. It is concluded that the Kroger Winchester plant or any other distributing plant located in the Louisville marketing area can be reasonably assured of an adequate supply if it is regulated under the Louisville order.

It should be noted that under the type of lock-in provision adopted herein, the Kroger plant or another distributing plant so situated would continue to be pooled indefinitely under the Louisville order so long as the plant meets such order's performance requirements for a pool distributing plant. This condition of pooling is intended to assure that the

¹ Official notice is taken of the lists of pool handlers under Federal Orders 33 and 46 as published by the respective market administrators for the months of November 1982 through September 1987.

Winchester plant is primarily engaged in the processing and distribution of fluid milk products to an extent that such plant's route distribution in the marketing area is a major competitive factor.

As noted earlier, under the lock-in provision adopted herein, such pool plant status is accorded a distributing plant so long as the Louisville order's Class I price applicable at such plant's location is not less than the Class I price applicable at the same plant's location under another order for a market where it has its greatest route distribution. This additional condition of pooling is intended to prevent any competitive price advantage accruing to a plant that otherwise would be locked-in under the adopted provision.

Under the lock-in provision adopted herein, the Louisville order would regulate the Winchester plant even though it had a greater proportion of its route distribution in the marketing area of the Ohio Valley order. However, the intent of this pooling arrangement is in conflict with the present pooling requirements of the Ohio Valley order since it does not have a complementary provision which will permit the plant to be locked-in under the Louisville order. As proposed by the lock-in proponents, the Ohio Valley order should be amended to provide for such a complementary provision.

In opposing the proposed lock-in provision at the hearing and in post-hearing briefs, opponents maintained that no departure should be made from the long established policy concerning regulation of a distributing plant that qualifies for pooling under two or more orders. It was the position of opponents that the record evidence did not warrant any departure from such established policy regarding the Winchester operation. Contrary to opponents' position, the pricing problems of Kroger are severe enough to warrant overriding the customary pooling provisions as related to the Kroger operation and support the adoption of the proposed lock-in provision.

NFO contended that the proposed lock-in proposal, if adopted, will widen the difference in producer pay prices between the Louisville and Ohio Valley orders to the extent that it will create inequities among producers within the same supply area. The record evidence, however, does not support this claim. Rather, adoption of the proposals will tend to provide uniformity of prices to producers within the procurement area of the Winchester plant.

In its exceptions, NFO renewed its objection to the adoption of a special pooling provision for a distributing plant

located in the Louisville marketing area. Most of the points raised in this regard were a reiteration of the views expressed by the cooperative at the hearing and in its post-hearing brief. Since such were already considered in formulating the tentative decision in this matter, no basis exists for changing the decision.

Additionally, NFO argued that the Department has no statutory authority to pool a distributing plant on the basis of where it is located. In support of this argument, the cooperative cited section 608c(11) of the Act which provides the basis of determining the scope or area of regulation of an order. This section, however, is not specifically pertinent to the issue at hand.

Pooling a distributing plant in the basis of physical location is adopted pursuant to the authority set forth in section 608c(7)(D) of the Act. This subsection specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicitly authorized by the Act if the incidental terms are found necessary to effectuate the other provisions of the order. The special pooling arrangement adopted herein is considered essential for the assurance of adequate supplies and the maintenance of orderly marketing. Accordingly, NFO's exception on this matter is denied.

2. Diversion of Producer Milk Under the Louisville Order

Rules concerning the diversion of producer milk from pool plants to nonpool plants should be modified to provide a procedure for accounting for over-diversions to nonpool plants. On the basis of this record, however, other diversion proposals should not be adopted. Such proposals would (1) relax the delivery requirement of an individual producer to establish diversion eligibility for the months of March through August; and (2) modify the basis of determining the quantity of producer milk that may be diverted to nonpool plants during the September-February period.

Presently, the order provides that during the months of March through August at least two days' production (one delivery for a producer on every-other-day pickup) of a producer must be physically received at a pool plant each month in order for the milk of such producer to be eligible for diversion to a nonpool plant as producer milk. During the September-February period, monthly diversions of a producer's milk to a nonpool plant cannot exceed 22 days' production (11 every-other-day pickups).

NFO proposed that diversion eligibility for a producer be reduced to

one day's production received at a pool plant and that diversions to nonpool plants during each of the months of September through February not exceed 60 percent of the producer milk received at a pool plant. At the hearing, however, NFO revised its diversion limitation proposal to increase the 60 percent factor to 70 percent and to permit diversion limits to be based either on 70 percent of total producer deliveries to pool plants or on the number of days of production of an individual producer that is actually delivered to a pool plant. Also, it proposed that under either option, diversion limitations should apply uniformly to both a cooperative association and a proprietary handler.

In support of its proposal to reduce the delivery requirement for an individual producer during the March-August period, a spokesman for NFO testified that the present two-day delivery requirement has occasionally caused problems when one day's production of a large producer has been picked up by two different bulk tank route trucks on succeeding days without both trucks delivering to a pool plant. According to the witness, this method of handling can result in some producer milk being depooled. The spokesman indicated that this is because the diverting handler, having assumed that all producers whose milk was on each truck met the two-day delivery requirement, would not discover the error until after the end of the month, when it was too late to correct the problem. To minimize or avoid the problem, the witness stated, it is necessary for the diverting handler to have the milk on an every-other-day truck route delivered to a pool plant at least twice a month solely to make certain that the two-day delivery requirement is met. He stated that this causes excessive hauling and handling because the additional milk delivered to the pool plant is not needed. Reducing the delivery requirement to one day, according to the witness, would eliminate this unnecessary expense and simplify monitoring producer shipments.

Also, NFO proposed that the limits on the quantity of milk that may be diverted to nonpool plants during the September-February period be based either on a percentage of a handler's total produce milk receipts at pool plants or, as presently provided, on the number of days of production of an individual producer that may be diverted to a nonpool plant. The purpose of the proposal, as stated by NFO's witness, is to provide the diverting handler with a choice in achieving efficient diversion of reserve milk

supplies to nonpool plants. Proponent's spokesman testified that basing diversion limitations only on the number of delivery days of an individual producer causes a handler unnecessary handling, pumping and hauling milk solely to maintain producer status for some of its dairy farmers. In NFO's view, the proposal would not encourage the pooling of greater quantities of producer milk under the order than is permitted now. Rather, NFO claimed that it would provide for increased efficiency in marketing reserve milk.

A spokesman for DI testified in opposition to NFO's proposals concerning diversions to nonpool plants. This witness argued that the present diversion provisions are adequate because there is every indication that the amount of milk being diverted by handlers in the market was well within the existing limits. He stated that liberalization of the diversion provisions would make less milk available to the fluid market at a time when market conditions call for greater shipments. To this end, DI offered two counter proposals which would (1) require that eight days' production of a producer be received at a pool plant during each of the months of September through February and (2) that the amount of milk that a handler may divert to nonpool plants not exceed a volume equal to one-third of the handler's producer milk physically received at or diverted from pool plants during such months.

At the hearing and in post-hearing briefs, both MMI and Kroger supported DI's position regarding diversions to nonpool plants.

Neither the delivery requirement for an individual producer or the limits on diversions to nonpool plants during September through February should be modified on the basis of this record.

The testimony presented by NFO in support of its proposal to change to a one-day delivery requirement, to a large extent, was general in nature and lacked "specificity." Its witness, for example, did not provide any evidence regarding the problem that NFO has had in meeting the order's present delivery requirement. Although the NFO witness testified that the two-day delivery requirement occasionally caused qualification problems when one day's production of a large producer was picked up in the same bulk tank truck that was also picking up 2 days' production of other producers, there was no evidence presented which indicated the number of times that this problem occurred or the quantity of milk of its member producers that was depooled. The record evidence does not demonstrate that the two-day delivery

requirement is excessive or that it is not needed to demonstrate that a producer is genuinely associated with the fluid market. Accordingly, the proposal is denied.

The basic issue developed on the record with respect to NFO's other diversion proposal concerns whether to provide an alternative option of basing diversion limitations on a percentage of a handler's total producer milk supply and what constitutes reasonable diversion limits in light of the market's present supply-demand conditions so that fluid milk plants are assured of adequate milk supplies.

The record evidence indicates that Class I utilization for Order 46 averaged 59.9 percent for 1986 and ranged from a low of 50.4 percent in June to a high of 72.4 percent in September. For the first five months of 1987, Class I utilization averaged 63.0 percent compared to an average of 56.0 percent for the same period in 1986. This supply-demand situation indicates that allowing a diverting handler to divert to a nonpool plant as much as 70 percent of its total producer receipts, as proposed by NFO, would not be appropriate.

Also, the record evidence suggests that all handlers on the market are able to operate within the diversion limits as now contained in the present order. For instance, data contained in the record shows that for 1986 diverted milk, as a percentage of producer receipts, ranged from a low of 16.5 percent for September to a high of 31.5 percent in May. Also, for the first five months of 1987, diversions to nonpool plants averaged 22.1 percent compared to 26.2 percent for 1986.

Conversely, on the basis of this record there is no apparent need to limit diversions to nonpool plants to the extent proposed by DI. There was no demonstration by DI that the current limit on the amount of milk that may be diverted is causing in any way disruptive marketing conditions.

In view of these considerations, the diversion limits, as now provided in the order, are appropriate for this market, considering current supply-demand conditions. The record evidence does not provide a compelling basis for changing the present diversion limits. Accordingly, all proposals to change diversion limits are denied.

As indicated previously, the order should be revised to specify the procedure for accounting for over-diverted milk. As proposed by both NFO and DI and as herein adopted, the order is revised to provide that milk diverted in excess of the diversion limits as prescribed by the order shall not be producer milk and that the diverting

handler shall designate the dairy farmers' deliveries that shall not be producer milk. Also, if the diverting handler fails to make such designation, none of the diverted milk of such handler shall be producer milk. This modification is desirable and appropriate.

Subsequent to the hearing, NFO filed a petition to have the hearing reopened in the event that the Secretary determines that DI's counter proposals that were offered in response to NFO's proposals concerning diversions to nonpool plants would be "worthy of consideration." Since DI's proposals were not adopted, the issue raised in NFO's petition is moot.

DI proposed at the hearing to amend the performance standards for a pool distributing plant. As proposed, diverted milk would be included along with milk physically received at the distributing plant as the base in calculating a plant's Class I utilization percentage. A specified minimum Class I utilization percentage is used as one of the conditions that must be met in determining the pooling status of a distributing plant under the order.

Counsel for NFO objected to the proposal on the basis that it was not included in the hearing notice and thus was outside the scope of the hearing. The Administrative Law Judge (ALJ) presiding at the hearing ruled that the proposal was not properly noticed and thus sustained the objection of NFO's counsel.

DI, in its brief, renewed the request to allow for testimony to be taken on the proposal since it was its position that the proposal was within the scope of the hearing. After a careful review of the matter, it is concluded that the ALJ's ruling in this regard was proper. Therefore, the motion to reverse the ruling of the ALJ is denied.

3. Pooling Provisions for a Plant Operated by a Cooperative Association and Regulated Under the Ohio Valley Order

As noted in the hearing notice, a proposal of NFO would have reduced from 50 percent to 40 percent the quantity of members' milk that must be delivered to pool distributing plants in order to qualify a plant operated by a cooperative association as a pool plant. At the hearing, NFO did not present any testimony in support of the proposal and in its brief NFO stated that it wanted to withdraw the proposal. Witnesses for both MMI and the Kroger Company testified in opposition to the proposal. Accordingly, no further consideration is given to the proposal in this proceeding.

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 supplement those that were made when the Ohio Valley and Louisville-Lexington-Evansville orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

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

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

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

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the

exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

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 orders regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

December 1987 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas are approved or favored by producers, as defined under the terms of the orders 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 areas.

List of Subjects in 7 CFR Parts 1033 and 1046

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC; on: April 20, 1988.

Kennet A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 orders 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 areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulates the handling of milk in the same manner, and are 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 Ohio Valley and Louisville-Lexington-Evansville marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on January 7, 1988 and published in the Federal Register on January 14, 1988 (53 FR 907), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

1. The authority citation for CFR Parts 1033 and 1046 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

2. Section 1033.56 is amended by revising the first sentence of paragraph (a) through the first comma and adding a new paragraph (c) to read as follows:

§ 1033.56 Plants subject to other Federal orders.

(a) Except as specified in § 1033.31 and in paragraphs (b) and (c) of this section,

(c) A plant qualified pursuant to § 1033.12(a) which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

3. Section 1046.7 is amended by revising paragraph (e) to read as follows:

§ 1046.7 Pool plant.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;
(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act, except:

(i) A plant that qualifies as a pool plant pursuant to paragraph (a), (b), (c), or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets in the marketing area are regulated pursuant to such other order during the current month; and

(ii) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the pooling requirements of another Federal order on the basis of route disposition if the plant is located in the Louisville-Lexington-Evansville marketing area and this order's Class I price applicable at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the

Federal order marketing area in which the plant has the greatest route disposition; and

(3) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

4. Section 1046.13 is amended by sending by adding a new paragraph (c)(4) to read as follows:

§ 1046.13 Producer milk.

(c) * * *

(4) Any milk diverted in excess of the limits prescribed in paragraph (c)(3) of this section shall not be producer milk. The diverting handler shall designate the farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk.

Marketing Agreement Regulating the Handling of Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ ____¹ to ____¹, all inclusive, of the order regulating the handling of milk in the (____) marketing area (7 CFR Part²) which is annexed hereto; and

II. The following provisions:
§ ____³ Record of milk handled and authorization to correct typographical errors.

¹ First and last sections of the respective orders.

² Appropriate part number.

³ Next consecutive section number.

(a) Record of milk handled. The undersigned certifies that he handled during the month of December 1987, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ ____³ Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

[FR Doc. 88-9150 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1944

Farmers Home Administration

Section 502 Rural Housing Loan Policies, Procedures and Authorizations; Interest Credit Continuation

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Section 502 Rural Housing loan regulations. This action is taken to implement a provision of law. The intended effect is to remove program restrictions on the provision of interest credit assistance.

DATES: Comments must be received by June 27, 1988.

ADDRESSES: Send comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348-S, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during normal working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, U.S. Department of Agriculture, Room 5338-S, 14th and Independence Avenue SW.,