Committee met publicly on February 7, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.952 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 910.952 Lemon Regulation 652.

The quantity of lemons grown in California and Arizona which may be handled during the period February 12, 1989, through February 18, 1989, is established at 310,000 cartons.

Dated: February 8, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-3335 Filed 2-9-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1006, 1012, and 1013

[Docket Nos. AO-356-A26, AO-347-A29, and AO-286-A36; DA-88-102

Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This order amends provisions of the three Florida milk orders to reflect current marketing conditions. The changes are based upon industry proposals considered at a public hearing held January 26, 1988, in Orlando, Florida.

Each of the three orders is amended to provide a two-month "lock-in" provision for pool distributing plants, seasonal diversion limits, and an increase in the charges on overdue accounts. Shrinkage on other source milk receipts is limited to bulk fluid milk products.

The Upper Florida and Tampa Bay orders are amended to permit a pool plant and a manufacturing plant under a single roof to operate as separate facilities.

The Southeastern Florida order is changed to require that a dairy farmer must deliver 10 days' production to a pool plant in order for such dairy farmer's milk to be diverted to nonpool plants as producer milk. Other miscellaneous amendments delete the $6 maximum on partial payments to producers and make other changes to conform the Southeastern Florida order to other Federal milk orders.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued January 12, 1988; published January 15, 1988 (53 FR 1035).

Recommended Decision: Issued September 2, 1988; published September 8, 1988 (53 FR 34766).

Final Decision: Issued January 13, 1989; published January 24, 1989 (54 FR 3462).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Florida, Tampa Bay and Southeastern Florida 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 upon the basis of the hearing record. 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 governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), 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 Upper Florida, Tampa Bay and Southeastern Florida marketing areas.

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 as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the order effective not later than March 1, 1989. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The provisions of this order are known to handlers. The recommended decision of the Administrator was issued September 2, 1988 (53 FR 34766), and the decision of the Assistant Secretary containing all amendment provisions of this order was issued January 13, 1989 (54 FR 3462). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. A further consideration in this matter is that this order increases for the month of March the percentage of producer milk under each of the 3 orders that may be shipped directly from the farm to nonpool plants and still be priced under such orders. Such action will lessen the regulatory impact of the orders on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the respective orders and thereby receive the benefits that accrue from such pricing. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the orders effective March 1, 1989, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations*. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing areas, to sign proposed marketing agreements, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders; and

(3) The issuance of the order amending the orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1006, 1012 and 1013

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1006, 1012 and 1013 continues to read as follows:

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

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

2. Revise § 1006.7 to read as follows:

§ 1006.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that are physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1006.7(a).

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and

(2) The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

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

(1) A producer-handler plant;

(2) An exempt distributing plant;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(4) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

3. In § 1006.13, paragraph (b) is revised to read as follows:

§ 1006.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: Provided, That any delivery during the current month from such producer to another order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified

applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

4. In § 1006.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1006.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1006.41 (a) to the receipts specified in § 1006.41 (a)(2) and in shrinkage specified in § 1006.41 (b) and (c).

* * * * *

5. Revise § 1006.41 to read as follows:

§ 1006.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1006.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1006.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1006.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1006.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1006.51 [Amended]

6. Amend § 1006.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

7. Amend § 1006.52 by adding a new paragraph (c) to read as follows:

§ 1006.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1006.60 [Amended]

8. In § 1006.60, paragraph (h) is removed.

9. In § 1006.75, revise paragraph (b) to read as follows:

§ 1006.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1006.71 and 1006.72, the uniform price shall be adjusted at the rates set forth in § 1006.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

10. Revise § 1006.78 to read as follows:

§ 1006.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1006.71, 1006.73, 1006.76, 1006.77, 1006.85 or 1006.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

11. Revise § 1012.7 to read as follows:

§ 1012.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1012.7(a).

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

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

12. In § 1012.13, paragraph (b) is revised to read as follows:

§ 1012.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided*, That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

13. In § 1012.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1012.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1012.41(a) to the receipts specified in § 1012.41(a)(2) and in shrinkage specified in § 1012.41 (b) and (c).

* * * * *

14. Revise § 1012.41 to read as follows:

§ 1012.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1012.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectivelvy, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1012.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1012.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1012.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1012.51 [Amended]

15. Amend § 1012.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

16. Amend § 1012.52 by adding a new paragraph (c) to read as follows:

§ 1012.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1012.60 [Amended]

17. In § 1012.60, paragraph (h) is removed.

18. In § 1012.75, revise paragraph (b) to read as follows:

§ 1012.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1012.71 and 1012.72, the uniform price shall be adjusted at the rates set forth in § 1012.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

19. Revise § 1012.78 to read as follows:

§ 1012.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1012.71, 1012.73, 1012.76, 1012.77, 1012.85, or 1012.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

20. Revise § 1013.7 to read as follows:

§ 1013.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1013.7(a).

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

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: Provided, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

21. Revise § 1013.12 to read as follows:

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1013.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by such person that is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

22. In § 1013.13, paragraph (b) is revised to read as follows:

§ 1013.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided*, That any delivery during the current month from such producer to another order plant regulated by the order that regulated such pool plant in

the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

23. In § 1013.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1013.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1013.41(a) to the receipts specified in § 1013.41(a)(2) and in shrinkage specified in § 1013.41 (b) and (c).

* * * * *

24. Revise § 1013.41 to read as follows:

§ 1013.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1013.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1013.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1013.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1013.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

25. In § 1013.50, revise the introductory text and paragraph (c) as follows:

§ 1013.50 Class prices.

Subject to the provisions of § 1013.52, the Class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

* * * * *

(c) *Class III price.* The Class III price shall be computed as follows: Multiply the butterfat differential pursuant to § 1013.74 for the month by 35 and round the result to the nearest cent.

§ 1013.51 [Amended]

26. Amend § 1013.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

27. Amend § 1013.52 by adding a new paragraph (c) to read as follows:

§ 1013.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1013.60 [Amended]

28. In § 1013.60, paragraph (h) is removed.

§ 1013.73 [Amended]

29. Amend § 1013.73(a) (1) and (2) by removing the phrase "but not to exceed $6,".

30. In § 1013.75, revise paragraph (b) to read as follows:

§ 1013.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1013.71 and 1013.72, the uniform price shall be adjusted at the rates set forth in § 1013.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

31. Revise § 1013.78 to read as follows:

§ 1013.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1013.71, 1013.73, 1013.76, 1013.77, 1013.85, or 1013.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Signed at Washington, DC, on: February 6, 1989.

Robert Melland,

Deputy Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89-3168 Filed 2-9-89; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 352, 354, 355, 362, 381, and 391

[Docket No. 88-017F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees primarily reflect the increased costs of providing these services due to the increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970. In addition, as a "housekeeping" measure, the dollar amounts for the services currently specified in Parts 307, 350, 351, 352, 354, 355, 362, and 381 are transferred to a new Part 391 (9 CFR Part 391).

EFFECTIVE DATE: February 12, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases only reflect an increase in costs to establishments that elect to utilize certain inspection services.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because the fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Background

On January 13, 1989, FSIS published a proposed rule in the **Federal Register** (54 FR 1367) to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments.

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products and the ordinary costs of providing it are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Any or all of these costs, which are not a part of the mandatory inspection service, are recoverable by the Government.

FSIS also provides a range of voluntary inspection services, the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Each year, the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by FSIS are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services; anticipated costs associated with changes in operations of the program; increases in those costs due to an increase in the salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970; and other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1989 pay raise of 4.1 percent for Federal employees, increased costs of the retirement system in 1989, and increased health insurance and travel

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[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested from that office.

costs, FSIS is increasing the fees relating to such services.

In addition, as a "housekeeping" measure, FSIS is transferring the dollar amounts currently specified in 9 CFR Parts 307, 350, 351, 352, 354, 355, 362, and 381 to a new Part 391 (9 CFR Part 391). However, the provisions for the fees to be charged by FSIS for the services specified herein will remain as currently codified in the Code of Federal Regulations. As the dollar amounts for the services provided herein may change at least annually, by consolidating these amounts into a separate Part 391, the Agency will only need to amend one Part instead of eight different Parts of the CFR each time the rates for such services are revised.

Agency Response to Comments

The Agency received one comment in response to the proposal. The commenter indicated that he did not support an increase in fees for certain inspection services.

The ordinary day-to-day costs of providing inspection services under the requirements of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) are borne by the Federal Government through the annual Congressional appropriations process. However, the Department is required by the FMIA (21 U.S.C. 695) and PPIA (21 U.S.C. 468) to recover the costs of overtime and holiday inspection services from those establishments which voluntarily elect to utilize such inspection services.

The rates provided for in this document are statutorily mandated and reflect only an incremental increase in the costs currently borne by those entities electing to utilize these and certain other voluntary inspection services. Therefore, the amendments, as proposed, to the Federal Meat and Poultry Products Inspection Regulations are promulgated herein.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat inspection, Reimbursable services, Voluntary inspection, Certification service.

9 CFR Part 351

Meat inspection, Reimbursable services, Technical animal fats.

9 CFR Part 352

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 354

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 355

Meat inspection, Reimbursable services, Certified products.

9 CFR Part 362

Poultry products inspection, Reimbursable services, Voluntary poultry inspection.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

9 CFR Part 391

Meat inspection, Poultry products inspection, Fees and charges.

Accordingly, the Federal meat and poultry products inspection regulations are amended as follows:

PART 307—[AMENDED]

1. The authority citation for part 307 continues to read as follows:

Authority: 7 U.S.C. 394, 21 U.S.C. 621, 695; 7 CFR 2.17 (g) and (i), 2.55.

2. Section 307.5(a) is revised to read as follows:

§ 307.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall reimburse the Program, at the rate specified in § 391.3, for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

3. Section 307.6(a) is revised to read as follows:

§ 307.6 Basis of billing for overtime and holiday service.

(a) Each recipient of overtime or holiday inspection service, or both, shall be billed as provided for in § 307.5(a) and at the rates specified in § 391.3, in increments of quarter hours. For billing purposes, 8 or more minutes shall be considered a full quarter hour. Billing will be for each quarter hour of service rendered by each Program employee.

* * * * *

PART 350—[AMENDED]

4. The authority citation for Part 350 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

5. Section 350.7(c) is revised to read as follows:

§ 350.7 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such services. Where appropriate, this time will include, but will not be limited to, the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 351—[AMENDED]

6. The authority citation for Part 351 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

7. Section 351.8 is revised to read as follows:

§ 351.8 Charges for surveys of plants.

Applicants for the certification service shall pay the Department for salary costs at the rates specified in §§ 391.2 and 391.3 respectively for base time, and for overtime, travel, and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

8. Section 351.9(a) is revised to read as follows:

§ 351.9 Charges or examinations.

(a) The fees to be charged and collected by the Administrator for examination shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs and which are required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

* * * * *

PART 352—[AMENDED]

9. The authority citation for Part 352 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

10. Section 352.5(c) is revised to read as follows:

§ 352.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 354—[AMENDED]

11. The authority citation for Part 354 reads as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

12. Section 354.101 (b) and (c) is revised to read as follows:

§ 354.101 On a fee basis.

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rates shall be as specified in §§ 391.2 and 391.3 respectively for base time and for overtime or holiday work.

(c) Charges for certain laboratory analysis or laboratory examination of rabbits under this Part related to inspection service shall be at the rate specified in § 391.4 for that part which is not covered under the base time, overtime, and/or holiday costs.

13. Section 354.107 is revised to read as follows:

§ 354.107 Continuous inspection performed on a resident basis.

The charges for inspection of rabbits and products thereof shall be those provided for in § 354.101(b) and specified by hourly rates in §§ 391.2 and 391.3 when the inspection service is performed on a continuous year-round resident basis and the services of an inspector or inspectors are required 4 or more hours per day. When the services of an inspector are required on an intermittent basis, the charges shall be those provided for in § 354.101(b) and specified by hourly rates in §§ 391.2 and 391.3 plus the travel expense and other charges provided for in § 354.106.

PART 355—[AMENDED]

14. The authority citation for Part 355 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

15. Section 355.12 is revised to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime, including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall reimburse the Service for the cost of the inspection service furnished.

PART 362—[AMENDED]

16. The authority citation for Part 362 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

17. Section 362.5(c) is revised to read as follows:

§ 362.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the services and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 381—[AMENDED]

18. The authority citation for Part 381 is revised to read as follows:

Authority: 21 U.S.C. 451 *et seq.*; 7 U.S.C. 450 *et seq.*

19. Section 381.38(a) is revised to read as follows:

§ 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall reimburse the Program, at the rate specified in § 391.3, for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

20. Section 381.39(a) is revised to read as follows:

§ 381.39 Basis of billing for overtime and holiday service.

(a) Each recipient of overtime or holiday inspection service, or both, shall be billed as provided for in § 381.38(a) and at the rate specified in § 391.3, in increments of quarter hours. For billing purposes, 8 or more minutes shall be considered a full quarter hour. Billing will be for each quarter hour of service rendered by each Inspection Service employee.

* * * * *

21. A new Part 391 (9 CFR Part 391) is added to Subchapter D to read as follows:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

2

Authority: 21 U.S.C. 460 *et seq.*, 601 *et seq.*, 7 U.S.C. 394, 1622, and 1624; 7 CFR 2.17(g) and (i), 2.55.

§ 391.1 Scope and purpose.

Fees shall be charged by the Agency for certain specified inspection services provided on a holiday, on an overtime basis, and/or which are voluntary inspection services.

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to sections 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $23.60 per hour, per Program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to sections 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $25.88 per hour, per Program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to sections 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $42.88 per hour, per Program employee.

The Administrator has determined that good cause exists to make these amendments effective less than 30 days after publication in the **Federal Register**.

Done at Washington, DC, on: February 3, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89–3209 Filed 2–9–89; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-61, Amdt. 39-6136]

Airworthiness Directives; Enstrom Helicopter Model F-28, F-28A, F-28C, F-28C-2, F-28F, 280, 280C, 280F, and 280FX Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires repetitive inspections, specifies necessary parts replacement, and establishes a service life limit on certain main rotor transmission clutch assemblies on certain Enstrom model helicopters. This AD is prompted by several reports of clutch failures which could result in loss of power to the rotors and subsequent loss of control of the helicopter.

EFFECTIVE DATE: February 24, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information, Enstrom Directive Bulletin 0068 and Enstrom Service Information Letter 0079A, may be obtained from Enstrom Helicopter Corporation, P.O. Box 277, Menominee, Michigan 49858. A copy of the service information is contained in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Building 3B, Room 158, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph H. McGarvey, ACE-115C, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7136.

SUPPLEMENTARY INFORMATION: There have been several reports of clutch failures causing substantial damage to certain Enstrom Model F-28, F-28A, F-28C, F-28C-2, F-28F, 280, 280C, 280F, and 280FX series helicopters. Based on research of the clutch failure data, the FAA has determined that the Enstrom main rotor transmission clutch assembly, Part Number (P/N) 28-13401-1, Formsprag P/N CL40526-1 thru -7, can no longer be safely overhauled and returned to service.

Since this condition is likely to exist or develop in other helicopters of this same type design, an AD is being issued that requires repetitive inspections, replacement of unairworthy clutch assemblies, and retirement from service of those clutch assemblies having 1,200 or more hours' time in service on Enstrom Model F-28, F-28A, F-28C, F-28C-2, 280, and 280C helicopters. The AD also requires a one-time inspection of clutch assemblies and replacement of unapproved assemblies on Enstrom Model F-28F, 280F, and 280FX helicopters.

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

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

The FAA has determined preliminarily that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Enstrom Helicopter Corporation: Applies to Enstrom Model F-28, F-28A, F-28C, F-28C-2, F-28F, 280, 280C, 280F, and 280FX series helicopters equipped with a P/N 28-13401-1, Formsprag CL40526-1 thru -7, main rotor transmission clutch assembly. (Docket No. 88-ASW-61)

Compliance is required as indicated, unless already accomplished.

To prevent the loss of main rotor lift and inertial energy storage capability that could result in substantial rotorcraft damage and subsequent loss of the helicopter, accomplish the following:

(a) For Model F-28, F-28A, F-28C, F-28C-2, 280, and 280C series helicopters, conduct the following checks, inspections, and replacement after the effective date of this AD:

(1) Within the next 25 hours' time in service, determine the part number of the main rotor transmission clutch assembly. Make an entry in the aircraft log book documenting the clutch assembly part number, the number of hours' time in service, and the date. For helicopters equipped with clutch assembly, P/N 28-13401-1, comply with paragraphs (a)(2) through (a)(8).

(2) Prior to each flight, follow the prescribed procedures in the applicable FAA-approved flight manual under normal operating conditions for rotor engagement, engine warmup, and ground checks. Before takeoff, gently close the throttle, splitting the tachometer needles to verify proper operation of the overrunning clutch.

(3) At the conclusion of each flight, follow the prescribed procedures in the applicable flight manual for normal engine cooldown and shutdown procedures. After engine shutdown, while the main rotor is still running down, check for any abnormal noise from the area of the upper pulley which houses the overrunning clutch.

(4) If any irregularities are noted while performing the procedures required by paragraph (a)(2) or (3) above, conduct the following check: