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FEDERAL REGISTER

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Washington, Friday, January 23, 1959

Title 3—THE PRESIDENT

Executive Order 10801

AMENDMENT OF EXECUTIVE ORDER NO. 10703,¹ AUTHORIZING THE INSPECTION OF CERTAIN TAX RETURNS

By virtue of the authority vested in me by sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code of 1939 (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U.S.C. 55(a), 508, 603, 729(a) and 1204), and by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), Executive Order No. 10703 of March 17, 1957, entitled "Inspection of Income, Excess-Profits, Declared-Value Excess-Profits, Capital-Stock, Estate, and Gift Tax Returns by the Select Committee of the Senate Established by Senate Resolution 74, 85th Congress, to Investigate Improper Activities in Labor-Management Relations, and for Other Purposes," is hereby amended by striking out "for the years 1945 to 1957, inclusive, shall, during the Eighty-fifth Congress," and inserting in lieu thereof "for the years 1945 to 1959, inclusive, shall, during the Eighty-fifth Congress and as long as the Committee is authorized to act during the Eighty-sixth Congress,".

This order shall be effective as of noon on January 3, 1959.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
January 21, 1959.

[F.R. Doc. 59-655; Filed, Jan. 21, 1959; 1:15 p.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Civil Aeronautics Board

Effective upon publication in the FEDERAL REGISTER, paragraph (1) of § 6.337,

¹ 22 F.R. 1797; 3 CFR, 1957 Supp., p. 63.

having expired by its own terms, is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] WM. C. HULL,
Executive Assistant.

[F.R. Doc. 59-619; Filed, Jan. 22, 1959; 8:47 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER B—FARM OWNERSHIP LOANS

[FHA Instruction 428.1]

PART 331—POLICIES AND AUTHORITIES

Average Values of Farms; Nebraska

On January 5, 1959, for the purposes of Title I of the Bankhead-Jones Farm Tenant Act, as amended, average values of efficient family-type farm-management units for the counties identified below were determined to be as herein set forth. The average values heretofore established for said counties, which appear in the tabulations of average values under § 331.17, Chapter III, Title 6 of the Code of Federal Regulations, are hereby superseded by the average values set forth below for said counties.

County	NEBRASKA	Average value
Adams	-----	\$40,000
Antelope	-----	40,000
Arthur	-----	40,000
Banner	-----	40,000
Blaine	-----	40,000
Boone	-----	40,000
Box Butte	-----	40,000
Boyd	-----	40,000
Brown	-----	40,000
Buffalo	-----	40,000
Burt	-----	40,000
Butler	-----	40,000
Cass	-----	40,000
Cedar	-----	40,000
Chase	-----	40,000
Cherry	-----	40,000
Cheyenne	-----	40,000

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NEBRASKA—Continued

<i>County</i>	<i>Average value</i>
Clay.....	\$40,000
Colfax.....	40,000
Cuming.....	40,000
Custer.....	40,000
Dakota.....	40,000
Dawes.....	40,000
Dawson.....	40,000
Deuel.....	40,000
Dixon.....	40,000
Dodge.....	40,000
Douglas.....	40,000
Dundy.....	40,000
Fillmore.....	40,000
Franklin.....	40,000
Frontier.....	40,000
Furnas.....	40,000
Gage.....	40,000
Garden.....	40,000
Garfield.....	40,000
Gosper.....	40,000
Grant.....	40,000
Greeley.....	40,000
Hall.....	40,000
Hamilton.....	40,000
Harlan.....	40,000
Hayes.....	40,000
Hitchcock.....	40,000
Holt.....	40,000
Hooker.....	40,000
Howard.....	40,000
Jefferson.....	40,000
Johnson.....	40,000
Kearney.....	40,000
Keith.....	40,000
Keya Paha.....	40,000
Kimball.....	40,000
Knox.....	40,000
Lancaster.....	40,000
Lincoln.....	40,000
Logan.....	40,000
Loup.....	40,000
McPherson.....	40,000
Madison.....	40,000
Merrick.....	40,000
Morrill.....	40,000
Nance.....	40,000
Nemaha.....	40,000
Nuckolls.....	40,000
Otoe.....	40,000
Pawnee.....	40,000
Perkins.....	40,000
Phelps.....	40,000
Pierce.....	40,000
Platte.....	40,000
Polk.....	40,000
Redwillow.....	40,000
Richardson.....	40,000
Rock.....	40,000
Saline.....	40,000
Sarpy.....	40,000
Saunders.....	40,000
Scotts Bluff.....	40,000
Seward.....	40,000
Sheridan.....	40,000

NEBRASKA—Continued		Average value
County	-----	
Sherman	-----	\$40,000
Sioux	-----	40,000
Stanton	-----	40,000
Thayer	-----	40,000
Thomas	-----	40,000
Thurston	-----	40,000
Valley	-----	40,000
Washington	-----	40,000
Wayne	-----	40,000
Webster	-----	40,000
Wheeler	-----	40,000
York	-----	40,000

Dated: January 19, 1959.

[SEAL] K. H. HANSEN,
Administrator,
Farmers Home Administration.

[F.R. Doc. 59-636; Filed, Jan. 22, 1959;
8:49 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 78—BRUCELLOSIS IN DOMESTIC ANIMALS

Subpart D—Designation of Modified Certified Brucellosis-Free Areas, Public Stockyards, and Slaughtering Establishments

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1884, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111-113, 114a-1, 120, 121, 125), § 78.13 is hereby amended to read as follows:

§ 78.13 Modified certified brucellosis-free areas.

The following States, counties, municipalities, and other areas, are hereby designated as modified certified brucellosis-free areas:

- (a) The entire State of Connecticut;
- (b) The entire State of Delaware;
- (c) The entire State of Maine;
- (d) The entire State of Michigan;
- (e) The entire State of Minnesota;
- (f) The entire State of New Hampshire;
- (g) The entire State of New Jersey;
- (h) The entire State of New Mexico;
- (i) The entire State of North Carolina;
- (j) The entire State of Pennsylvania;
- (k) The entire Commonwealth of Puerto Rico;
- (l) The entire State of Rhode Island;
- (m) The entire State of Utah;
- (n) The entire State of Vermont;
- (o) The entire State of Washington;
- (p) The entire State of Wisconsin;
- (q) Alabama: Cherokee, De Kalb, and Etowah Counties;
- (r) Arizona: Apache, Cochise, Cocino, Gila, Graham, Greenlee, Mohave,

Navajo, Pima, Pinal, Santa Cruz, Yavapai and Yuma Counties; Arizona Strip in Mohave and Coconino Counties, and Gila Indian Reservation, Hopi Indian Reservation, and Navajo Indian Reservation;

(s) Arkansas: Baxter, Benton, Boone, Carroll, Clark, Cleburne, Columbia, Fulton, Garland, Grant, Hempstead, Hot Spring, Izard, Johnson, Lafayette, Madison, Marion, Nevada, Newton, Saline, Searcy, Sharp, Stone, and Yell Counties;

(t) California: Alpine, Del Norte, and Mono Counties;

(u) Colorado: Alamosa, Archuleta, Conejos, Costilla, Dolores, Gunnison, La Plata, Mesa, Montezuma, Montrose, Ouray, Rio Grande, Seguache, San Juan, and San Miguel Counties; Southern Indian Ute Reservation, and Ute Mountain Ute Reservation;

(v) Florida: Ray, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties;

(w) Georgia: Appling, Atkinson, Bacon, Baldwin, Banks, Barrow, Ben Hill, Berrien, Brantley, Bryan, Bullock, Burke, Butte, Candler, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Coffee, Colquitt, Columbia, Cook, Crawford, Dawson, Dodge, Douglas, Elbert, Evans, Fannin, Forsyth, Franklin, Glascock, Glynn, Gordon, Gwinnett, Habersham, Hall, Hart, Heard, Irwin, Jackson, Jeff Davis, Jenkins, Johnson, Jones, Lamar, Laurens, Liberty, Long, Lumpkin, Madison, Marion, Monroe, Montgomery, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Quitman, Rabun, Rockdale, Schley, Spalding, Stephens, Talbot, Taylor, Tift, Toombs, Towns, Treutlen, Turner, Union, Upson, Walker, Warren, Washington, Wayne, Webster, Wheeler, White, Wilcox, Wilkinson, and Worth Counties;

(x) Idaho: Ada, Benewah, Blaine, Bonner, Boundary, Butte, Camas, Clark, Clearwater, Custer, Elmore, Gooding, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Power, Shoshone, Teton, Valley and Washington Counties; and Fort Hill Indian Reservation;

(y) Illinois: Boone, Bureau, Champaign, Clay, Clinton, Cook, Cumberland, De Kalk, Du Page, Edgar, Effingham, Ford, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, Livingston, McHenry, Macon, Perry, Stephenson, Vermilion, Wabash, Will and Winnebago Counties;

(z) Indiana: Adams, Allen, Blackford, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, De Kalk, Delaware, Dubois, Elkhart, Floyd, Fulton, Grant, Harrison, Huntington, Jay, Lake, La Porte, Madison, Marion, Marshall, Martin, Noble, Orange, Parke, Perry, Pike, Porter, Posey, Pulaski, Randolph, Saint Joseph, Spencer, Starke, Steuben, Sullivan, Vanderburgh, Vermillion, Wabash, Warrick, Wells, and Whitley Counties;

(aa) Kansas: Decatur;

(bb) Kentucky: Calloway, Elliott, Graves, Greenup, Lawrence, Morgan, Rowan, Trigg, and Wolfe Counties;

(cc) Louisiana: Claiborne Parish;

(dd) Maryland: Allegany, Baltimore, Calvert, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince Georges, Queen Annes, Somerset, Talbot, Washington, Wicomico, and Worcester Counties;

(ee) Massachusetts: Barnstable, Berkshire, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Suffolk Counties;

(ff) Mississippi: Alcorn, Attala, Choctaw, Forrest, George, Hancock, Itawamba, Jackson, Lee, Perry, Pike, Pontotoc, Prentiss, Smith, Tippah, Tishomingo, Union, Walthall, Winston, and Yalobusha Counties;

(gg) Missouri: Butler, Cape Girardeau, Carroll, Christian, Franklin, Greene, Jackson, Jasper, Jefferson, Lawrence, Monroe, Montgomery, Oregon, Perry, Ralls, Ripley, Saint Charles, Saint Francois, Sainte Genevieve, Texas, Webster and Worth Counties;

(hh) Montana: Beaverhead, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, McCone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powell, Prairie, Richland, Rivalli, Roosevelt, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland and Wibaux Counties;

(ii) Nebraska: Adams, Burt, Butler, Case, Cedar, Clay, Colfax, Cuming, Dakota, Dixon, Dodge, Fillmore, Gage, Hamilton, Harlan, Howard, Jefferson, Johnson, Lancaster, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Pierce, Platte, Polk, Richardson, Saline, Sarpy, Saunders, Seward, Stanton, Thayer, Thurston, Washington, Wayne, Webster, and York Counties;

(jj) Nevada: Churchill, Clark, Douglas, Esmeralda, Lincoln, Lyon, Mineral, Ormsby, Pershing, Storey, Washoe, and White Pine Counties; and Pyramid Indian Reservation;

(kk) New York: Bronx, Essex, Franklin, Hamilton, Onondaga, Rockland, Richmond, Schenectady, Schoharie, Schuyler, Sullivan, and Warren Counties;

(ll) North Dakota: Adams, Barnes, Benson, Bottineau, Bowman, Burke, Cass, Cavalier, Divide, Dunn, Emmons, Grand Forks, Grant, Griggs, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Steele, Towner, Traill, Walsh, Ward, Wells, and Williams Counties;

(mm) Ohio: Belmont, Carroll, Columbiana, Fulton, Guernsey, Hancock, Mahoning, Meigs, Monroe, Ottawa, Paulding, Putnam, Scioto, Tuscarawas, Van Wert, Washington, Wood, and Wyandot Counties;

(nn) Oregon: Baker, Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Deschutes, Douglas, Grant, Hood River, Josephine, Lane, Lincoln, Linn, Malheur, Marion, Morrow, Multnomah, Polk,

Sherman, Tillamook, Umatilla, Union, Wasco, Washington, and Yamhill Counties; and Warm Springs Indian Reservation;

(oo) South Carolina: Bamberg, Barnwell, Cherokee, Chester, Chesterfield, Clarendon, Dillon, Hampton, Horry, Laurens, Lee, Lexington, Marlboro, McCormick, Newberry, Pickens, Saluda, Sumter, Union, and York Counties;

(pp) South Dakota: Butte, Custer, Harding, and Lawrence Counties;

(qq) Tennessee: Anderson, Bedford, Benton, Campbell, Carroll, Carter, Chester, Claiborne, Clay, Cocke, DeKalb, Dyer, Fentress, Franklin, Gibson, Giles, Hancock, Hardeman, Henry, Houston, Jackson, Jefferson, Johnson, Knox, Lawrence, Lewis, Lincoln, Loudon, Macon, Madison, Marshall, Maury, McNairy, Meigs, Montgomery, Morgan, Monroe, Moore, Obion, Overton, Pickett, Polk, Putnam, Rhea, Scott, Shelby, Smith, Stewart, Sullivan, Tipton, Trousdale, Unicoi, Union, Wayne, Weakley, Williamson, and Wilson Counties;

(rr) Texas: Brewster, Jeff Davis, Presidio;

(ss) Virgin Islands: St. Thomas County;

(tt) Virginia: Accomack, Alleghany, Arlington, Bath, Bland, Buchanan, Buckingham, Caroline, Charles City, Clarke, Craig, Cumberland, Essex, Fairfax, Giles, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King William, Lancaster, Lee, Mathews, Middlesex, Nansemond, Norfolk, Northampton, Northumberland, Orange, Page, Prince William, Princess Anne, Richmond, Scott, Southampton, Spotsylvania, Westmoreland, Wise, Wythe and York Counties; and Hampton City;

(uu) West Virginia: Berkeley, Boone, Brooke, Cabell, Calhoun, Clay, Doddridge, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Harrison, Jackson, Jefferson, Kanawha, Lincoln, Logan, Marion, Marshall, McDowell, Mercer, Mineral, Mingo, Monroe, Morgan, Nicholas, Ohio, Pleasants, Pocahontas, Putnam, Raleigh, Roane, Summers, Taylor, Upshur, Wayne, Webster, Wirt, Wood, and Wyoming Counties;

(vv) Wyoming: Big Horn, Lincoln and Park Counties.

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER.

The amendment deletes Fayette County in West Virginia from the list of areas designated as modified certified brucellosis-free areas, because it has been determined that such county no longer comes within the definition of § 78.1(i), and adds certain additional areas which have been determined to come within such definition.

The amendment imposes certain restrictions necessary to prevent the spread of brucellosis in cattle and relieves certain restrictions presently imposed. It should be made effective promptly in order to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is

found upon good cause that notice and other public procedure with respect to the amendment are impracticable, and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; 21 U.S.C. 111-113, 114a-1, 120, 125; 9 CFR, 1958 Supp., 78.16)

Done at Washington, D.C., this 20th day of January 1959.

[SEAL] R. J. ANDERSON,
Director, Animal Disease Eradication Division, Agricultural Research Service.

[F.R. Doc. 59-635; Filed, Jan. 22, 1959; 8:49 a.m.]

Title 14—CIVIL AVIATION

Chapter II—Federal Aviation Agency

[Amdt. 4]

PART 608—RESTRICTED AREAS

Minimum Alterations

This amendment makes minor alterations in previously designated restricted areas involving changes in name, altitudes, time of usage, size or controlling agency. While these alterations are believed to impose no additional burden on any person, this action has been coordinated with civil aviation organizations, the Army, the Navy and the Air Force through the processes of the Air Coordinating Committee. For these reasons, compliance with the notice, procedure and effective date provisions of section 4 of the Administrative Procedure Act is unnecessary.

Part 608 published as a "Revision of the Part" on November 4, 1958, in 23 F.R. 8575 is amended as follows:

1. In § 608.14, the Bullion Mountains, California, area (R-344) is amended by changing the "Controlling Agency" to read: "Commanding General, Marine Corps Base, Twentynine Palms, California."

2. In § 608.14, the Camp Cooke, California, areas (R-531 and W/R-532) are amended by changing the name to read: "Naval Missile Facility, Pt. Arguello, California, and the "Controlling Agency" to read: "Pacific Missile Range, Pt. Mugu, California."

3. In § 608.14, the Camp Cooke, California, area (W/R-532) correct "Description by Geographical Coordinates" to read: "beginning at latitude 34°34'52", longitude 120°42'57" * * *" instead of "beginning at latitude 34°35'00", longitude 120°41'35" * * *".

4. In § 608.14, the Camp Irwin, California, area (R-276) is amended by changing the "Controlling Agency" to read: "Commanding General, Camp Irwin, California."

5. In § 608.14, the Point Mugu, California, area (R-100) is amended by changing the "Controlling Agency" to read: "Pacific Missile Range, Point Mugu, California."

6. In § 608.14, the Sand Hills, California, area (R-314) is amended by changing the "Time of Designation" to read: "Days".

7. In § 608.17, the Bethany Beach, Delaware, area (R-67) amended on December 19, 1958 in 23 F.R. 9773 is further amended by changing the "Designated Altitudes" to read: "Surface to 75,000 feet MSL".

8. In § 608.24, the Brookville, Kansas, area (R-196) is amended by changing the "Designated Altitudes" to read: "Surface to 50,000 feet"; "Time of Designation" to read: "Days, continuous"; "Controlling Agency" to read: "Commander, 802d Aid Division, Schilling AFB, Kansas".

9. In § 608.25, the Fort Campbell, Campbell, Kentucky, area (R-63A) is added to read:

Description by geographical coordinates: Beginning at latitude 36°39'17", longitude 87°30'14"; thence to latitude 36°39'17", longitude 87°29'38"; thence to latitude 36°41'00", longitude 87°27'30"; thence to latitude 36°36'36", longitude 87°25'22".

Designated altitudes: Surface to 18,000 feet MSL.

Time of designation: Continuous.

Controlling agency: U.S. Army, Fort Campbell, Kentucky.

10. In § 608.25, the Fort Campbell, Campbell, Kentucky, area (R-63) is amended by changing the "Description by Geographical Coordinates" to read: beginning at latitude 36°44'00", longitude 87°40'00"; to latitude 36°39'17", longitude 87°40'00"; to latitude 36°39'17", longitude 87°30'14"; to latitude 36°36'36", longitude 87°25'22"; to latitude 36°32'00", longitude 87°23'00"; to latitude 36°32'00", longitude 87°50'00"; to latitude 36°44'00", longitude 87°50'00"; to latitude 36°44'00", longitude 87°40'00"; point of beginning.

11. In § 608.29, the Nashawena, Massachusetts, area (R-62) is amended by changing the "Controlling Agency" to read: "Commander Fleet Air, Quonset Point, Rhode Island."

12. In § 608.40, the Gardiner's Island, New York, area (R-19) is amended by changing the "Designated Altitudes" to read: "75,000 feet" and the "Time of Designation" to read: "Days".

13. In § 608.41, the Albemarle Sound, North Carolina, areas (R-1 and R-2) are rescinded.

14. In § 608.41, the Currituck Sound, North Carolina, area (R-31) is rescinded.

15. In § 608.47, the Rhode Island Sound, Rhode Island, formerly Block Island, Rhode Island, is amended by changing the "Description by Geographical Coordinates" to read: Beginning at latitude 41°18'30", longitude 71°17'30"; thence south to latitude 41°11'15", longitude 71°17'30"; thence westerly to latitude 41°10'30", longitude 71°30'00"; thence north to latitude 41°17'00", longitude 71°30'00"; thence easterly to the point of beginning; "Designated Altitudes" to read: "Surface to 50,000 feet"; "Time of Designation" to read: "Continuous"; and the "Controlling Agency" to read: "Commanding Officer, U.S. Naval Station, Newport, Rhode Island (NAVFORCO, Newport, Rhode Island)".

16. In § 608.61, the Cook Inlet, Alaska, areas (R-347 and R-466) are rescinded.

17. In § 608.64, the Nafatan Rock, Guam, area (R-478) is corrected to read: "Description by Geographical Coordinates: Within a radius of 5 nautical miles of latitude 14°50'00" N, longitude 145°32'00" E excluding the portion beyond 3 nautical miles from the shoreline", and the "Designated Altitudes" to read: "Surface to 60,000 feet".

(Sec. 313(a) of the Federal Aviation Act of 1958, Act of Aug. 23, 1958, 72 Stat. 752, (Pub. Law 85-726). Interpret or apply sec. 307(a), 307(c); 72 Stat. 749, 750 (Pub. Law 85-726))

This amendment shall become effective on February 12, 1959.

Issued in Washington, D.C. on January 16, 1959.

E. R. QUESADA,
Administrator.

[F.R. Doc. 59-611; Filed, Jan. 22, 1959;
8:46 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission [Docket 7166]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Top Form Mills, Inc., et al.

Subpart—*Advertising falsely or misleadingly*: § 13.155 *Prices*: Fictitious marking; § 13.285 *Value*. Subpart—*Furnishing means and instrumentalities of misrepresentation or deception*: § 13.1056 *Preticketing merchandise misleadingly*. Subpart—*Misbranding or mislabeling*: § 13.1280 *Price*. Subpart—*Misrepresenting oneself and goods*—*Prices*: § 13.1811 *Fictitious preticketing*. (Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Top Form Mills, Inc., et al., New York, N.Y., Docket 7166, December 2, 1958]

In the Matter of Top Form Mills, Inc., a Corporation, and Emanuel Kitrosser, also Known as Manny Kay, and Seymour L. Topping, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging manufacturers of women's slips and other wearing apparel in New York City with setting out excessive and fictitious amounts as "Value" and "Special purchase" in advertising mats and other promotional material supplied to retailers and dealers, on tickets attached to the garments prior to sale, and in advertisements in Vogue, Harpers Bazaar, and Mademoiselle magazines.

Based on agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on December 2 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents, Top Form Mills, Inc., a corporation, and its officers, and Emanuel Kitrosser, also known as Manny Kay, and Seymour L.

Topping, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's wearing apparel and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, directly or by implication:

a. That a certain amount is the regular and usual retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail;

b. That the value of merchandise is any amount which is, in fact, in excess of the actual market value of said merchandise.

2. Placing in the hands of retailers and dealers, a means and instrumentality by and through which they may deceive and mislead the purchasing public, concerning merchandise in the respects set out in Paragraph 1 above.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the above-named respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: December 2, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 59-612; Filed, Jan. 22, 1959;
8:45 a.m.]

[Docket 7170]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Amicale Yarns, Inc., et al.

Subpart—*Invoicing products falsely*: § 13.1108 *Invoicing products falsely*: Wool Products Labeling Act. Subpart—*Misbranding or mislabeling*: § 13.1190 *Composition*: Wool Products Labeling Act. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure*: § 13.1852 *Formal regulatory and statutory requirements*: Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68-68(c)) [Cease and desist order, Amicale Yarns, Inc., et al., New York, N.Y., Docket 7170, December 2, 1958]

In the Matter of Amicale Yarns, Inc., a Corporation, and Gregory Schlomm, Philip Brenner and Emmanuel Mendelkern, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging distributors in New York City with violating the Wool

Products Labeling Act by labeling and invoicing as "100 percent Cashmere", yarn which contained substantially less than 100 percent cashmere fibers, and by failing to label certain yarns as required by the Act.

Following acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on December 2 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Amicale Yarns, Inc., a corporation, and its officers, and Gregory Schlomm, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of yarn or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) re-used wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total fiber weight of such wool product of any non-fibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool products into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Amicale Yarns, Inc., a corporation, and its officers, and Gregory Schlomm, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of yarns or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and

desist from misrepresenting, directly or indirectly, the fibers of which their products are composed, or the percentages or amounts thereof, in sales invoices, shipping memoranda, or in any other manner.

It is further ordered, That the complaint herein, insofar as it relates to respondents Philip Brenner and Emanuel Mendelkern, be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such action in the future as the facts may then warrant.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondents, Amicale Yarns, Inc., a corporation, and Gregory Schlomm, individually and as an officer of said corporation shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision.

Issued: December 2, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 59-613; Filed, Jan. 22, 1959;
8:45 a.m.]

[Docket 6961]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Simon Hafner and Hafner Coffee Co.

Subpart—*Discriminating in price under section 2, Clayton Act, as amended*—Payment for services of facilities for processing or sale under 2(d): § 13.824 *Advertising expenses.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 38 Stat. 730, as amended; 15 U.S.C. 13) [Cease and desist order, Simon Hafner doing business as Hafner Coffee Company, Pittsburgh, Pa., Docket 6961, December 3, 1958]

In the Matter of Simon Hafner an Individual Doing Business as Hafner Coffee Company

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a company preparing and selling coffee in Pittsburgh, Pa., under some 1,000 different private brand names and under its own trade name, to grocery wholesalers and jobbers, with annual sales approximating \$3,000,000, with discriminating in price in violation of sec. 2(d) of the Clayton Act by paying certain customers an allowance for advertising in connection with the sale of its coffee products while not making such payments available to their competitors on proportionally equal terms.

After acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on December 3 the decision of the Commission.

The order to cease and desist is a follows:

It is ordered, That respondent Simon Hafner, an individual doing business as Hafner Coffee Company, directly or through any corporate or other device in or in connection with the sale of coffee and instant coffee, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from: Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of Respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of Respondent's coffee or instant coffee, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondent Simon Hafner, an individual doing business as Hafner Coffee Company, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: December 3, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 59-614; Filed, Jan. 22, 1959;
8:45 a.m.]

[Docket 7198]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Bank Street Clothes, Inc., et al.

Subpart—*Furnishing false guaranties:* § 13.1053 *Furnishing false guaranties:* Wool Products Labeling Act. Subpart—*Misbranding or mislabeling:* § 13.1190 *Composition:* Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* Wool Products Labeling Act. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure:* § 13.1852 *Formal regulatory and statutory requirements:* Wool Products Labeling Act. Subpart—*Using misleading name—Goods:* § 13.2280 *Composition:* Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68-68(c)) [Cease and desist order, Bank Street Clothes, Inc., et al., New York, N.Y., Docket 7198, December 3, 1958]

In the Matter of Bank Street Clothes, Inc., a Corporation, and Jack Lifshitz, Seymour Lindell and Jerry Lindell, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging manufacturers in New York City with violating the Wool Products Labeling Act by falsely labeling

men's suits as "All Wool Exclusive of Ornamentation"; by improperly describing a portion of the fiber content as "worsted"; by failing in other respects to conform to the labeling requirements of the Act; and by furnishing false guaranties that certain of their products were not misbranded.

Following entry of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on December 3 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Bank Street Clothes, Inc., a corporation, and its officers, and Jack Lifshitz, Seymour Lindell and Jerry Lindell, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of men's suits or other wool products, as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool products of any non-fibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939;

3. Using a word or words to describe the fiber content of wool products on the tag, label or other means of identification attached to such product which is not the common generic name of the fiber described;

4. Failing to attach a stamp, tag, label or other means of identification containing the information required under section 4(a) (2) of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, to each

unit of multiple wool products sold in combination;

5. Failing to set forth on the stamp, tag, label or other means of identification attached to wool products, all items and parts of the information required under section 4(a)(2) of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, consecutively and in immediate connection with each other;

B. Furnishing false guaranties that wool products are not misbranded when there is reason to believe that the wool products so guaranteed may be introduced into commerce or sold, transported or distributed in commerce.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Bank Street Clothes, Inc., a corporation, and Jack Lifshitz, Seymour Lindell and Jerry Lindell, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: December 3, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 59-615; Filed, Jan. 22, 1959;
8:45 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 54770]

PART 22—DRAWBACK

Drawback of Internal Revenue Tax; Flavoring Extracts and Medicinal or Toilet Preparations

Treasury Department Order No. 165-9 (23 F.R. 6362) effective January 1, 1959, transferred from the Commissioner of Internal Revenue and delegated to the Commissioner of Customs the function, authorized by section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), of allowing drawback upon exported flavoring extracts and medicinal or toilet preparations (including perfumery) in an amount equal to the internal-revenue tax found to have been paid on domestic alcohol used in the manufacture or production of such articles in the United States.

In order to provide the procedure for performing the above-mentioned function, the Customs regulations are amended as follows:

1. Section 22.23(e) is amended by inserting in the second sentence "and statements" after the word "declarations" and by inserting the following after the first sentence: "If no claim has been or will be filed with the Internal Revenue Service for the domestic draw-

back, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the Assistant Regional Commissioner of Internal Revenue, Alcohol and Tobacco Tax, for the region in which the manufacturer's factory is located. The statement shall show the quantity and description of the exported products, the identity of the alcohol used by serial number of package or tank car, the name and registry number of the warehouse from which the alcohol was withdrawn, the date of withdrawal, the serial number of the taxpaid stamp or certificate, and the port where the drawback claim will be filed. The Assistant Regional Commissioner will verify the statement, forward the original of the document to the port designated, and retain the copy."

2. Section 22.25(a) is amended to read:

(a) The drawback claimant or manufacturer shall submit an application in writing to the Assistant Regional Commissioner of Internal Revenue, Alcohol and Tobacco Tax, for the region in which the alcohol used in manufacture was withdrawn, for the issuance of a taxpaid certificate on internal-revenue Form 646 to the collector of customs with whom the drawback claim will be filed. The application shall state the quantity of alcohol in taxable gallons, the serial number of each package, the serial number of the stamp, the amount of tax paid on the alcohol, the name, registry number, and location of the warehouse, the date of withdrawal, the name of the manufacturer using the alcohol in producing the exported articles, the address of the manufacturer and of his manufacturing plant, and the port where the drawback claim will be filed. If the application is accompanied by customs Form 7545, showing any of such data, the data so shown need not be repeated in the application.

3. Section 22.26 is amended as follows:

a. Paragraph (b) is amended by deleting the second and third sentences and by inserting the following after the first sentence: "If the declaration and verified statement required by § 22.23(e) show that no claim has been, or will be, made by the manufacturer for the domestic drawback, the drawback allowed shall be the full amount of the tax paid on the alcohol used."

b. Paragraph (c) is amended to read:

(c) The amount of drawback due having been ascertained, the collector shall, in accordance with § 22.20(e), certify such amount for payment.

(Secs. 313, 624, 46 Stat. 693, as amended, 759; 19 U.S.C. 1313, 1624)

These amendments shall become effective on January 1, 1959.

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: January 19, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

[F.R. Doc. 59-621; Filed, Jan. 22, 1959;
8:47 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

[T.D. 6357]

PART 252—DRAWBACK ON LIQUORS EXPORTED

PART 253—REMOVALS OF ALCOHOLIC LIQUORS, TOBACCO PRODUCTS, AND OTHER DOMESTIC ARTICLES TO FOREIGN-TRADE ZONES

Flavoring Extracts and Medicinal or Toilet Preparations

On August 19, 1958, a notice of proposed rule making with respect to the amendment of the regulations in 26 CFR Parts 252 and 253 was published in the FEDERAL REGISTER (23 F.R. 6362). The proposed amendments would conform these regulations to Treasury Department Order No. 165-9 transferring from the Commissioner of Internal Revenue to the Commissioner of Customs the function of allowing drawback of an amount equal to the internal revenue tax found to have been paid on domestic alcohol used in the manufacture or production in the United States of flavoring extracts and medicinal or toilet preparations (including perfumery) that have been exported.

In accordance with the notice, interested parties were afforded an opportunity to submit written data, views, or arguments pertaining thereto. No written comments were received within the period of 30 days prescribed in the notice, and the regulations so published are hereby adopted as set forth below.

This Treasury decision shall be effective as of January 1, 1959, the effective date of Treasury Department Order No. 165-9.

(68A Stat. 917; 26 U.S.C. 7805)

O. GORDON DELK,
Acting Commissioner of
Internal Revenue.

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: January 19, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

PARAGRAPH 1. Part 252 is amended as follows:

(A) Section 252.1 is amended to read as follows:

§ 252.1 Drawback on distilled spirits, wines, and beer.

The regulations in this part relate to the allowance of drawback of internal revenue tax on (a) distilled spirits and wines packaged or bottled especially for export and beer brewed and manufactured in the United States when exported or used as supplies on vessels or aircraft, and (b) distilled spirits exported in distiller's original packages containing not

less than 20 wine gallons each. Regulations relating to drawback of tax on such articles deposited in foreign-trade zones are contained in part 253 of this chapter.

§§ 252.180-252.184 [Revocation]

(B) Subpart F, containing §§ 252.180 to 252.184, is revoked.

PAR. 2. Part 253 is amended as follows:

§ 253.20 [Amendment]

(A) Section 253.20 is amended by deleting "flavoring extracts, and medicinal or toilet preparations made with taxpaid alcohol;" from the definition of the word "articles".

§ 253.200, 253.201 [Revocation]

(B) Sections 253.200 and 253.201 and the undesignated centerhead preceding the two sections are revoked.

[F.R. Doc. 59-622; Filed, Jan. 22, 1959; 8:47 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 672—CONSTRUCTION, BUSINESS SERVICE, MOTION PICTURE, AND MISCELLANEOUS INDUSTRY IN PUERTO RICO

Correction

In F.R. Doc. 59-472, appearing at page 420 of the issue for Saturday, January 17, 1959, the following changes should be made:

1. In the first paragraph of the document, "Industry Committee No. 42-G" should read "Industry Committee No. 42-C".

2. In § 672.2(b), the words "paragraph 2(a) of this section" should read "paragraph (a) of this section".

recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended.

(c) *Loan*. The term "loan" includes any loan or advance of credit other than a mortgage loan.

(d) *Mortgagee*. The term "mortgagee" includes the original maker of a loan secured by a mortgage and his successors and assigns.

(e) *Lender*. The term "lender" includes the original maker of a loan or advance of credit other than a loan secured by a mortgage and his successors and assigns.

(f) *Mortgagor*. The term "mortgagor" includes the original borrower under a mortgage approved by the Secretary, and his successors and assigns.

(g) *Actual cost*. The term "actual cost" of a vessel as of any specified date means the aggregate as determined by the Secretary of (1) all amounts paid by or for the account of the mortgagor or borrower on or before that date, and (2) all amounts which the mortgagee is then obligated to pay from time to time thereafter under a contract or contracts for the construction, reconstruction or reconditioning (including designing, inspecting, outfitting and equipping) of the vessels, provided such contract or contracts shall include, in addition to profit, only those items customarily included in such contract or contracts as contractor's items of cost, except where the Secretary finds that those charges are unfair or unreasonable.

(h) *Reconstruction; reconditioning*. The terms "reconstruction" and "reconditioning" contemplates a rebuilding of the hull or hull and engine of such magnitude that the actual cost is more than thirty percent of the replacement value of the vessel.

(i) *Secretary*. The term "Secretary" means the Secretary of the Interior or his authorized representatives.

(j) *Act*. The term "Act" means the Merchant Marine Act, 1936, as amended.

§ 165.3 Eligibility requirements.

(a) *Mortgage*. To be eligible for insurance under this part, a mortgage:

(1) Shall have a mortgagee approved by the Secretary as possessing the ability, spondible and able to service the mortgage properly, and a mortgagor approved by the Secretary as possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the mortgaged property;

(2) Shall involve an obligation in a principal amount which does not exceed 75 percent of the actual cost of the vessel, such actual cost to be determined by the Secretary prior to the execution of the mortgage and such determination to be conclusive for the purpose of determining the principal amount of the mortgage;

(3) Shall secure bonds, notes, or other obligations having maturity dates satisfactory to the Secretary not to exceed 15 years from the date of execution. In no event will a mortgage be insured for a time longer than the economic life of the mortgaged property, as determined by the Secretary. Ordinarily the economic life of a vessel will be deter-

PROPOSED RULE MAKING

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Parts 160, 165]

FISHING VESSEL MORTGAGE INSURANCE PROCEDURES

Notice of Proposed Rule Making

Notice is hereby given that, pursuant to the authority vested in the Secretary of the Interior by a determination of the Director of the Bureau of the Budget on March 22, 1958, that all functions of the Department of Commerce pertaining to Federal Ship Mortgage Insurance for Fishing Vessels should be transferred to the Department of the Interior pursuant to section 6(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c), it is proposed to adopt the regulations set forth below.

The regulations proposed to be revised relate to matters which are exempt from the rule making requirements of the Administrative Procedure Act (5 U.S.C. 1003); however, it is the policy of the Department of the Interior that, wherever practicable, the rule making provisions of the Act be observed voluntarily. Accordingly, prior to the final adoption of the regulations set forth below in tentative form, consideration will be given to any comments, suggestions, or objections relating thereto which are submitted in writing to the Director, Bureau of Commercial Fisheries, Washington 25, D.C., within thirty days of the date of publication of this regulation in the FEDERAL REGISTER.

Subchapter J of Title 50 will be redesignated "Aid to Fisheries" and Part 160 will be redesignated "Fisheries Loan Fund Procedures."

Dated: January 16 1959.

FRED A. SEATON,
Secretary of the Interior.

Sec.

165.1	Basis and purpose.
165.2	Definitions.
165.3	Eligibility requirements.
165.4	Applications.
165.5	Commitment.
165.6	Closing procedure.
165.7	Defaults.

§ 165.1 Basis and purpose.

(a) Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. secs. 1271-1279) authorizes the Secretary of Commerce to insure certain eligible loans and mortgages on vessels, including fishing vessels owned by citizens of the United States. On March 22, 1958, the Director of the Bureau of the Budget, pursuant to section 6(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. sec. 742c), made a determination that all functions of the Department of Commerce pertaining to Federal ship mortgage insurance for fishing vessels related primarily to the development, advancement, management and protection of commercial fisheries and should therefore be deemed to be transferred to the Department of the Interior by section 6(a) of the Fish and Wildlife Act of 1956 (23 F.R. 2304).

(b) The purpose of this part is to prescribe rules and regulations governing Federal ship mortgage and loan insurance with respect to fishing vessels owned by citizens of the United States under Title XI, Merchant Marine Act, 1936, as amended.

§ 165.2 Definitions.

(a) *Fishing vessel*. The term "fishing vessel" includes all types of vessels owned by citizens of the United States used directly in the catching of fish or shellfish for commercial purposes.

(b) *Mortgage*. The term "mortgage" includes a preferred mortgage as defined in the Ship Mortgage Act, 1920, as amended, and a mortgage which will be considered a preferred mortgage when re-

mined as running not more than 10 years from the date of completion of any reconstruction or reconditioning thereof.

(4) Shall contain amortization provisions satisfactory to the Secretary requiring periodic payments by the mortgagor:

(5) Shall secure bonds, notes or other obligations bearing interest (exclusive of premium charges for insurance) at a rate not to exceed 5 per centum per annum on the amount of the unpaid principal at any time; or not to exceed 6 per centum per annum if the Secretary finds that in certain areas or under special circumstances, the mortgage or lending market demands it;

(6) Shall provide, in a manner satisfactory to the Secretary, for the application of the mortgagor's periodic payments to amortization of the principal of the mortgage, exclusive of the amount allocated to interest;

(7) Shall contain such terms and provisions with respect to the operation of the vessel or vessels, in a fishery or fisheries approved by the Secretary, repairs, alterations, payment of taxes, insurance, delinquency charges, revisions, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters pertinent to the security as the Secretary may require;

(8) Shall secure a loan made to aid in financing, including payment of loans previously made to finance, and reimbursement of the mortgagor for expenditures previously made for construction, reconstruction and reconditioning (including design, inspecting, outfitting and equipping) of fishing vessels being done or having been done by the firm submitting the lowest bid after the receipt of competitive bids, unless acceptance of a higher bid has been approved by the Secretary;

(9) Shall provide that the mortgagor shall pay to the mortgagee the amount required for the payment of each mortgage insurance premium charge at least 60 days before the payment of such premium charge to the Secretary is due and shall further provide that the failure of the mortgagor to make such payment shall be a default of the mortgage;

(10) Shall provide for the acceleration of the maturity date and immediate payment of the indebtedness in the event of any default in the performance conditions of the mortgage or in the event of the loss or destruction of the mortgaged property;

(11) Shall have the contract of insurance or commitment to insure approved before the launching of a vessel, if the application covers vessel construction, or before the work of reconstruction or reconditioning is completed if the mortgage is to pay for reconstruction or reconditioning; and

(12) Shall contain such other provisions as may be agreed upon between the mortgagor and mortgagee which are not inconsistent with the provisions of subparagraphs (1) to (11) of this paragraph and which are not disapproved by the Secretary.

(b) *Loans* To be eligible for insurance under this part a loan

(1) Shall be made by a lender approved by the Secretary to a borrower

approved by the Secretary as possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the property;

(2) Shall be made to aid in financing, include payment of loans previously made to finance, and reimbursement of the borrower for expenditures previously made for construction, reconstruction, or reconditioning (including design, inspection, outfitting, and equipment) of fishing vessels being done or having been done by the firm submitting the lowest bid after the receipt of competitive bids, unless the acceptance of a higher bid has been approved by the Secretary;

(3) Shall be payable to or simultaneously with execution of the mortgage;

(4) Shall provide that no advance shall be made thereunder unless the sum of such advance and the principal amount of all other advances under insured loans then outstanding at the time of said advance shall be less than 75 per cent of the actual cost of such vessel, such actual cost to be determined by the Secretary and such determination to be conclusive for the purpose of determining the principal amount of the loan;

(5) Shall provide for the payment first, from sources other than the insured loan, by and for the account of the owner, of not less than 25 per centum of actual cost, and thereafter for payments by the lender direct to the shipyard or other contractors, except where the payment is for reimbursement of the borrower for amounts expended by or for the account of the borrower on account of actual cost but excluding reimbursement for payments required to meet the first 25 per centum of the actual cost: *Provided*, That no payment shall be made by the lender until work representing 25 per centum of actual cost shall have been performed and that payments by the lender shall at no time exceed 75 per centum of actual cost of work performed to the time of payment;

(6) Shall provide that the borrower shall pay to the lender the amount required for the payment of each loan insurance premium charge at least 60 days before the payment of such premium charge to the Secretary is due, and which shall further provide that the failure of the borrower to make such payment shall give the lender the right to mature the loan;

(7) Shall bear interest at an average interest rate not to exceed the maximum rate permitted by subparagraph (5) of paragraph (a) of this section;

(8) Shall provide for vesting of title to the vessel in the borrower according to payments made subject only to the lien or other rights of the contractor for additional amounts due and unpaid;

(9) The furnishing of satisfactory insurance and a satisfactory performance bond by the contractor;

(10) The performance of the work substantially in accordance with contract plans and specifications approved by the Secretary; with the provision that all changes under the contract require approval of the Secretary prior to the commencement of work involving the changed specifications; and the furnish-

ing of all technical material necessary for the Secretary's approval of the changes;

(11) The furnishing of two copies of all working plans, schedules and sketches promptly after approval by the owner; two copies of correspondence regarding work being done or to be done; and one copy of the vessel's certificates, documents and test reports if required by the Secretary;

(12) Shall provide for a chattel mortgage on the vessel being constructed and such other security or collateral as the Secretary may require;

(13) Shall provide for the acceleration of the maturity date and immediate payment of the indebtedness in the event of any default in the performance conditions of the loan (mortgage) or in the event of the loss or destruction of the property (mortgaged property); and

(14) Shall contain such other provisions as may be agreed upon between the borrower and the lender which are not inconsistent with the provisions of the subparagraphs (1) to (13) of this paragraph and which shall not be disapproved by the Secretary, and such other provisions as may be required by the Secretary.

(c) *Premium charges.* (1) In the case of any mortgage insured under this part, the premium charge for such insurance shall be one per centum per annum of the average principal amount of the mortgage outstanding.

(2) In the case of loans insured under this part the premium charge for such insurance shall be one-half of one per centum per annum of the average principal amount of the loan outstanding.

(3) Premium payments shall be made when moneys are first advanced under the mortgage or loan agreement and on each anniversary date thereafter. In the event that the Secretary at any time determines that the amount of any premium charge is not correct, he shall promptly give notice thereof to the lender and the borrower, specifying the amount of the deficiency or excess. The lender shall, within 30 days after receipt of said notice, pay or cause to be paid to the Secretary the amount of any deficiency. The Secretary shall promptly refund to the lender the amount of any excess.

(4) Unless otherwise specified by the Secretary, all premium charges may be paid by check, payable to the Secretary of the Interior delivered to the Bureau of Commercial Fisheries, Department of the Interior, Washington 25, D.C., accompanied by a letter stating that the payment is on account of a premium charge under the contract of insurance and specifying the period covered by the payment.

(5) Each premium charge shall be deemed to be fully earned when paid and no refund will be made by the Secretary of any premium charge paid in the event the insurance is terminated.

§ 165.4 Applications.

Applications may be for mortgage insurance, loan insurance, or both, or for commitments to insure

(a) *Where filed* Application shall be filed with the Director, Bureau of Com-

mercial Fisheries, Department of the Interior, Washington 25, D.C., on an application form furnished by the Bureau except that, in the discretion of the Secretary, an application made other than by use of the prescribed form may be considered if the application contains information deemed to be sufficient.

(b) *Processing of applications.* If it is determined on the basis of a preliminary review, that the application is complete and appears to be in conformity with the Act and this part, a field examination will be made. Following completion of the field examination, the application will be forwarded with an appropriate report to the Bureau of Commercial Fisheries, Washington, D.C. The application and all supporting documents must be filed in sufficient time to permit the Secretary to make a full and complete investigation and to take all other action required in respect thereto, and in any event not later than 90 days prior to the anticipated date of the closing of the transaction.

(c) *Books, records, and reports.* The Secretary shall have the right to inspect such books and records of the applicant as the Secretary may deem necessary. A commitment to insure or a contract of insurance made under this part shall be made only upon the agreement of the borrower and lender to furnish the Secretary, promptly upon his request, such reasonable material and pertinent reports, evidence, proof and information as he may require in connection with insurance granted or applied for, and to permit the Secretary, upon his request, to make such reasonable examination and audit of his records and books of account as the Secretary may deem necessary in connection with insurance granted or applied for.

(d) *Inspection of property.* The Secretary shall have access at all times to all vessels with respect to a loan or mortgage which is insured or for which an application for insurance has been filed.

(e) *Investigation fee.* Each application must be accompanied by payment pursuant to section 1104(e) of the Act in the amount of \$50 or one-half of one percent of the original principal amount of the mortgage or loan to be insured, whichever is less, which payment will be retained by the Secretary irrespective of the final disposition of the application. After preliminary consideration of the application, the applicant shall pay to the Secretary upon request such additional amount or amounts as the Secretary may deem reasonable for the investigation of the application for insurance, necessary appraisals, issuance of commitments, and inspection of property during construction, reconstruction or reconditioning: *Provided*, That total charges shall not aggregate more than one-half of one percent of the original principal amount of the mortgage or loan to be insured. Any additional amount or amounts so paid shall be retained by the Secretary if the application is approved, and one-half of any additional amount or amounts so paid shall be retained by the Secretary if the application is not approved. Unless otherwise agreed by the mortgagor or

borrower and the mortgagee or lender, all such amounts shall be paid by the mortgagor or borrower.

§ 165.5 Commitment.

A commitment to insure the loan or mortgage will be issued by the Secretary, when such a commitment is required prior to the actual completion of the note and/or mortgage. This commitment will provide that the Secretary will insure a loan or mortgage, and will further state the terms and conditions under which this insurance will be issued. It will also contain the covenants to be accepted by the borrower and lender.

§ 165.6 Closing procedure.

The contract of insurance shall take effect upon payment of the first year's insurance premium in accordance with § 165.3(c) and the signing of the contract of insurance by the Secretary, the borrower and the lender.

§ 165.7 Defaults.

(a) *Rights of mortgagee, lender, or Secretary.* In the event of any act or failure to act which gives the mortgagee the right to foreclose the mortgage or the lender the right to mature the loan, any of these events being herein called defaults, the rights of the mortgagee, the lender, and the Secretary are as prescribed in section 1105(a) of the Act.

(b) *Assignment to Secretary.* In the event an assignment of the mortgage or note and of the obligations securing the mortgage or note shall be tendered to the Secretary in accordance with section 1105(a) of the Act, the assignment shall be as approved by the Secretary and annexed to the contract of insurance and such other documents as may be required by the Secretary, and shall be duly executed by or on behalf of the lender. Such assignment shall include the assignment to the Secretary of all collateral or security for the mortgage or loan and all policies of insurance held by the lender pursuant to the mortgage or loan agreement.

(c) *After assignment.* In the event the Secretary shall accept an assignment of a mortgage or loan agreement and the obligation or obligations secured by the same, upon default of the borrower, the Secretary may take any action authorized by sections 1105(c) and 1105(d) of the Act and any action authorized, permitted by, or provided for in the mortgage or loan agreement.

[F.R. Doc. 59-616, Filed, Jan. 22, 1959; 8 46 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 221]

[Economic Regs. Draft Release 103-A]

CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Posting and Notice Requirements

JANUARY 20, 1959.

The Board gave notice in 23 FR 9842, and by circulation of Economic Regula-

tions Draft Release No. 103, dated December 16, 1958, that it had under consideration an amendment to Part 221 of the Economic Regulations which would require each air carrier to post all tariff publications issued but not yet effective and all currently effective tariffs to which it is a party, and to post each such tariff 30 days before it becomes effective. In its notice the Board requested interested parties to submit such comments as they may desire not later than January 20, 1959.

The Board has been requested to extend the date for return of comments on the questions outlined in its aforesaid Notice.

The undersigned, acting under authority duly delegated to him by the Board, finds that good cause has been shown for an extension of time of about two weeks, and that such an extension will be reasonable and not inconsistent with the public interest.

Accordingly, notice is hereby given that the time within which comments on Draft Release No. 103 will be received is extended to February 5, 1959.

(Sec. 204(a) of the Federal Aviation Act, 72 Stat. 1324; 49 U.S.C. 1324)

[SEAL] ROSS I. NEWMANN,
Assistant General Counsel,
Rules and Legislation.

[F.R. Doc. 59-637; Filed, Jan. 22, 1959, 8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 942]

HANDLING OF MILK IN NEW ORLEANS, LOUISIANA, MARKETING AREA

Class I Milk Price; Suspension of Certain Provisions

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of certain provisions of the order regulating the handling of milk in the New Orleans, Louisiana, marketing area is being considered.

The provisions proposed to be suspended, appearing in § 942.51(a)(3), are

- 24 or more.....	11
- 21 or - 22.....	11
- 18 or - 19.....	37
- 15 or - 16.....	31
- 12 or - 13.....	33
- 9 or - 10.....	11

and

+ 9 or - 10.....	19
+ 12 or - 13.....	37
+ 15 or - 16.....	31
+ 18 or - 19.....	37
+ 21 or - 22.....	33
+ 24 or more.....	39

All persons desiring to submit data, views and arguments with respect to the foregoing proposed suspension may do so by forwarding four copies thereof post-marked not later than three days after publication of this notice in the FEDERAL REGISTER, to the Hearing Clerk, Room

112, Administration Building, United States Department of Agriculture, Washington 25, D.C.

Issued at Washington, D.C., this 21st day of January 1959.

[SEAL] CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 59-667; Filed, Jan. 22, 1959; 8:49 a.m.]

17 CFR Part 974 I

[Docket No. AO-176-A13]

HANDLING OF MILK IN COLUMBUS, OHIO, MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement, and order regulating the handling of milk in the Columbus, Ohio, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Columbus, Ohio, on May 14-16 and May 19, 1958, pursuant to notice thereof which was issued April 22, 1958 (23 F.R. 2807).

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

1. Expanding the marketing area;
2. Changing the method of paying producers, including revision of the fall incentive payment plan;
3. Modifying the provisions for classifying milk transferred or diverted between plants and milk disposed of in eggnog and milk shake mixes;
4. Revising the pricing provisions, including the basis for announcing class prices, the date for announcing the Class I and Class II prices, the supply-demand adjuster, the level of the Class I and Class IV prices, the level of the Class I, Class II and Class IV butterfat differentials and the producer butterfat differential;
5. Revising the pricing of Class III milk;

6. Revising the location differentials to handlers and to producers; and

7. Revising and reissuing the entire order to add a number of new definitions, to clarify the provisions with respect to the accounting for milk, and incorporate a number of other clarifying and conforming changes in the order language.

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. The Columbus marketing area should be expanded to include the 10 townships of Franklin County not included in the present marketing area; all of Delaware County; the two tiers of townships in Licking County adjacent to Franklin County; all of Fairfield County except Clear Creek and Amanda townships; Fairfield, Union, Jefferson, Canaan, Oak Run and Darby townships in Madison County; and Jerome township in Union County. The present marketing area is composed of Blendon, Clinton, Franklin, Marion, Mifflin, Perry, Sharon, and Truro townships in Franklin County.

The Columbus marketing area has not been expanded since the order was issued in 1946. Since that time the incorporated area of the city of Columbus and the population in the remainder of Franklin County and the adjacent area have increased substantially. As the result of additions to the city of Columbus since the promulgation of the order, the southern and northwestern boundaries of the marketing area are now almost co-terminus with the incorporated boundary of Columbus. On the west side of the marketing area, suburbs of Columbus, including Upper Arlington, Grandview Heights, and Marble Cliff, extend to the boundary of the marketing area. Other communities, both incorporated and unincorporated, extend the contiguous relatively populous areas beyond the present marketing area boundaries into the surrounding counties of Madison, Fairfield, Licking, and Delaware. The population of the 10 townships of Franklin County not now included in the present marketing area was about 45,000 January 1, 1958. This represents an increase of about 40 percent since 1950.

The 10 townships of Franklin County not included in the present marketing area and the additional area recommended herein represent a substantial market for producer milk under the Columbus order. Nearly all of the fluid milk requirements of these 10 townships are supplied by handlers regulated under the Columbus order. One unregulated distributor from Fairfield County sells a relatively small quantity of milk in the southern part of Franklin County not now in the marketing area. Other unregulated distributors now sell milk in nearly all areas adjacent to the Franklin County line. Handlers regulated under the Columbus order supported producers in the proposal to include all of Franklin County in the marketing area. No handler or producer group opposed this extension of the marketing area.

Producers proposed that all of Fairfield County be included in the Columbus marketing area. Local distributors in Fair-

field County proposed that all of this county, except the townships of Clear Creek and Amanda, be included in the Columbus marketing area. This area constitutes the primary sales area of local distributors. These distributors supply most of the fluid milk requirements in this proposed area except in the three townships of Violet, Liberty, and Bloom. Columbus handlers supply most of the fluid milk used in these townships. They also sell milk in Clear Creek and Amanda townships; however, the proportion of the total sales made in these townships by Columbus handlers is not clear. An unregulated distributor from Pickaway County also sells milk in Clear Creek and Amanda townships. An unregulated distributor from Newark, Ohio, is selling milk in Walnut township. An unregulated distributor from Zanesville, Ohio, has recently started selling milk in Rush Creek, Liberty, and Walnut townships of this county. Neither of these distributors sell substantial quantities of milk in Fairfield County at this time but resale price cutting has prevailed. In the absence of regulation for establishing prices paid dairy farmers for milk, price cutting is very likely to spread to the extent that producer prices are reduced and market instability prevails.

Dairy farmers who supply the proponent distributors with milk are closely intermingled with producers under the Columbus order. Most of these dairy farmers are members of the cooperative association which regularly supplies Columbus handlers the major part of their fluid milk. In recent years, the distributors in Fairfield County have paid dairy farmers shipping to their plants at the rate of the Columbus blend price.

The nine townships in Licking County recommended for inclusion in the marketing area comprise the two western tiers of townships of the county and are contiguous to Franklin and Delaware Counties. Some of these townships are no more than one mile from the incorporated area of Columbus. This is the general direction in which the incorporated area of Columbus has been expanding most rapidly.

Columbus regulated handlers are the primary distributors of fluid milk in the recommended area of Licking County. They distribute more than 75 percent of the milk in Lima, Harrison, and Etna townships and more than 40 percent in Jersey and Monroe townships. Unregulated handlers have recently started competing in the proposed area of Licking County on the basis of cut-rate prices. The extension of regulation to this area will assist producers in retaining their present sales in this area by removing some of the incentive for handlers, not subject to full regulation, to cut prices on the basis of lower prices to dairy farmers or the disposition of surplus milk for fluid uses. No testimony was presented in opposition to including these nine townships in the Columbus marketing area.

Delaware County is closely associated with the Columbus market in the distribution of milk. The milk requirements in the county are distributed by handlers regulated under the Columbus order,

handlers regulated under the North Central Ohio order, and two local unregulated distributors. About 62 percent of the milk is distributed by the two unregulated distributors, about 26 percent by Columbus regulated handlers, and about 12 percent by handlers regulated under the North Central Ohio order. One of the unregulated distributors receives milk from 16 dairy farmers and the other one receives milk from five dairy farmers, including himself.

The distribution area of the unregulated distributors is limited to Delaware County. Routes from one of the local dairies, the larger one, cover the entire county without concentration in any particular area, except for the city of Delaware. More than 30 percent of the milk disposed of from this plant is disposed of in the city of Delaware, the primary center of consumption in the county. About 42 percent of the total population of the county and about 74 percent of the population in incorporated areas of the county are in the city of Delaware.

Columbus handlers distribute milk in 11 of the 18 townships in Delaware County. They distribute more than 90 percent of the milk in Orange and Berkshire townships, more than one-third of the milk in Delaware (the township in which the city of Delaware is located) and Trenton townships, about one-fourth of the milk in Genoa and Harlan townships, and less than one-fourth of the milk in each of the other five townships in which any distribution is made by them.

The inclusion in the marketing area of the townships in Delaware County where population associated with Columbus has increased significantly or where Columbus handlers are the principal suppliers of milk would result in full regulation of the Delaware distributors. These distributors are the principal suppliers of milk for the remainder of the county and their distribution areas are confined to the county. No other unregulated distributors disposed of milk in Delaware County. It is concluded, therefore, that the orderly marketing of milk will be promoted by including all of Delaware County in the Columbus marketing area.

The two local distributors opposed the extension of the marketing area to include Delaware County on the grounds that differences in the pricing and pooling provisions of the Columbus and North Central Ohio orders, with special reference to the price of milk used to produce ice cream, would jeopardize their positions in both the procurement and sale of milk in competition with handlers regulated under the North Central Ohio order. Both of these distributors pay producers for milk on the basis of the Columbus blend price and producer butterfat differential. A substantial proportion of the milk receipts of the larger of these two distributors is used to produce ice cream. The classification of his milk receipts in Class I and the other price classifications would be similar to that of the Columbus market, except a larger proportion of his receipts would be in Class III (includes milk used to produce ice cream) and a lower propor-

tion in Class IV. This distributor was particularly concerned that, under regulation, he would be required to pay the Columbus Class III price for milk used to produce ice cream. Dairy farmers supplying these distributors with milk objected to including Delaware County because of the deductions which producers under the order are required to pay for marketing services rendered by the market administrator.

The performance of check testing and weighing of milk and the supplying of current market information is a valuable service in the interest of producers. The producers supplying milk to this plant would receive the marketwide blend price which reflects supply and demand conditions in this area and the same price as all other producers supplying the market.

Regulation of the Delaware county distributors under the Columbus order would not place them at an undue competitive disadvantage in the procurement and sale of milk. Dairy farmers supplying them with milk would be paid on the same basis as other producers under the Columbus order. The Delaware county plants compete for sales with Marion, Ohio, plants regulated by the North Central Ohio order. During 1957, the Class I price under the Columbus order was an average of only two cents per hundredweight more than the Class I price that would have been applicable under the North Central Ohio order at Marion, Ohio, had Marion been included in the North Central Ohio marketing area during the entire year. For 1957, the cost of the milk components (solids and fat) of ice cream was about equal, whether the milk from which they came was paid for at the rate of the Columbus blend price adjusted by the producer butterfat differential or at the rate of the Columbus Class III price.

Union, Oak Run, Fairfield, Jefferson, Canaan, and Darby townships in Madison county and Jerome township in Union county form the contiguous area of Madison and Union counties in which Columbus handlers make a substantial proportion of the fluid milk sales. These sales are significant to Columbus handlers. This area is contiguous to the areas of Delaware and Franklin counties recommended to be included in the Columbus marketing area. The main centers of consumption in the area are West Jefferson in Jefferson township, Plain City in Darby and Jerome townships and London in Union township. A Columbus regulated handler supplies more than 50 percent of the fluid milk sales in these towns through a broker whose primary distribution is in this area. He supplies more than 80 percent of the fluid milk requirements in Darby township, more than 50 percent in Jefferson and Union townships, more than 30 percent in Oak Run township and more than 20 percent of the requirements in Fairfield township.

An unregulated distributor from Fayette County may or may not become a fully regulated handler with the inclusion of the townships in Madison and Union Counties in conjunction with the pool plant requirements recommended herein. This handler supplies most of

the milk in the recommended townships not supplied by handlers now regulated under the Columbus order. It was estimated that from 6 to 10 percent of his fluid milk sales are in these townships. An unregulated distributor from Marysville, Ohio, sells a very small amount of milk in Jerome township. The Fayette County distributor has a sales area of 10 or more counties including Madison and Union Counties, between the Columbus, Dayton-Springfield, Tri-State, and Cincinnati marketing areas. Three of the more important counties in his distribution area—Fayette, Ross, and Highland—are also his major procurement area. These counties are located outside the Columbus milkshed.

The competitive position of the Fayette County distributor would be relatively unchanged as a fully regulated handler under the Columbus order. During 1957 his milk costs were an average of 12-22 cents per hundredweight higher than the classification value of such milk calculated on the basis of minimum order prices. Participating in the Columbus pool would have little if any effect on his ability to continue the same relative rate of payment to his particular producers, because the proportions of his milk receipts that would have been classified in the different classes under the Columbus order were shown to be not significantly different from those proportions for the Columbus market. He, however, would be required to pay the 2 cents per hundredweight administrative assessment and his producers, who are not members of a cooperative authorized to perform marketing service, would pay the marketing service charge under the Columbus order.

The extension of the Columbus marketing area into Madison and Union Counties should be limited to the townships recommended above. Additional areas would include the less populous rural areas of the counties in which the volume of fluid milk sales is relatively small or areas in which unregulated distributors or handlers regulated under other orders are the primary suppliers of the fluid milk requirements. Unregulated distributors and handlers regulated under other orders are the primary suppliers of fluid milk in Union County, excluding Jerome Township. At least one unregulated distributor who sells milk in Union County, other than the distributor from Fayette County, is located outside Union County and does a more significant proportion of his fluid milk business in other areas.

All milk sold for fluid consumption in the recommended marketing area, with the possible exception of some of the townships of Licking County, must be graded milk. Plants, if any, handling milk for fluid disposition which is not required to meet the ordinance requirements of a duly constituted public health authority for labeling as Grade A milk should not be subject to full regulation and such milk would not be pooled as producer milk under the order.

A proposal to include Fayette, Highland, Pickaway, and Ross counties in the Columbus marketing area and another proposal to include certain townships of Pickaway county were not supported

at the hearing. These proposals are denied.

Adoption of the recommended marketing area would assure that all milk sold in this area is classified and priced to handlers on an equitable basis and that producers who are primarily responsible for supplying the fluid milk requirements of the area share in the proceeds from the sale of such milk on a uniform and equitable basis. Any competitive advantages, attributable primarily to buying milk at the Columbus order blend price, which distributors selling fluid milk in the area may have would be eliminated. This would provide the basic conditions necessary to promote stable and orderly marketing of producer milk. The recommended area is an integral part of the Columbus marketing area from the standpoint of milk distribution, and geographical location. The area decided upon is the minimum area that will accomplish the purpose of the regulation. The recommended area would include the major portions of the sales areas of all plants which would be fully regulated, except, perhaps, the plant located in Fayette county, and would keep to a minimum the number of partially regulated handlers.

2. The order should provide that, upon the request of a properly qualified cooperative association, such association shall receive proceeds due producer-members from the sale of milk.

The Central Ohio Cooperative Milk Producers proposed that handlers make payment for milk received from all producers to the market administrator at the class prices and he in turn pay-cooperatives for members' milk and each nonmember producer for his milk at the marketwide uniform price. Under the present provisions of the order, handlers have the option of either paying all producers directly from whom they receive milk or paying the cooperative association for producer-members and paying nonmembers directly. In either case, payment is at the marketwide uniform price and any difference between these payments and the individual handler's utilization value for producer milk is equalized through the producer-settlement fund.

Members of the Central Ohio Milk Producers Association supply about 80 percent of the producer milk in the Columbus market. Under the association's contract with its members, it is the sole agent responsible for marketing their milk and is authorized to receive payment for such milk.

Because the cooperative association is responsible for marketing a substantial proportion of the producer milk on the market, the proper allocation of milk among handlers is of importance to the association. Achieving such an allocation, moreover, will aid in increasing returns to all producers for the total milk supply. The proper allocation of milk is a responsibility of, and to a considerable extent is within the power of, the association. In discharging its marketing responsibilities, it has been necessary in at least one instance for the association to divert milk for its own account to a nonpool plant, thus becoming a han-

dler under the order. With the increasing number of bulk tank shippers in the Columbus market, it is expected that the cooperative will find it necessary to exercise its control over larger quantities of producer milk. The cooperative may realize a gain or loss on any diverted milk for which it is the handler, depending upon whether the price received is higher or lower than the particular order utilization price. The cooperative desires that any such gain or loss be distributed over all milk of its producer-members rather than only over the milk for which the cooperative becomes a handler. The cooperative's marketing function would be facilitated by providing for the cooperative to receive payment for all milk of its producer-members.

Most handlers in the market do not favor relinquishing payment directly to producers. However, contingent upon the cooperative association making payment to members, these handlers proposed certain mechanical changes primarily for the purpose of reducing the amount of work by handlers under the reporting and payment provisions. Handlers suggested that cooperative associations be required to make payment to producer-members on or before a specified date, that handlers have the option as to whether they pay nonmember-producers directly or through a third party, and that a provision be included in the order which would "save the handlers from harm" from any claims which may be lodged against them under State Law as a result of producers having been paid through a third party.

Handlers should be permitted to choose whether they will pay nonmember-producers directly or through the market administrator. In terms of the benefits to the market which may accrue as a result of a cooperative association making payment to their producer-members, it is a matter of indifference whether handlers make payment directly to nonmember-producers or through a third party. Handlers should also be relieved of as much detail in reporting as is consistent with accomplishing the purpose of the order, especially where such relief represents a net efficiency for the market.

The inclusion of "save harmless" language in the order would serve no purpose because the handler's obligation for milk under the order is fulfilled upon payment to the market administrator. Notice is taken of the fact that payment provisions under which handlers are required to make payment to the market administrator for producer milk have been in effect under the Cincinnati order for a number of years and that no claims outside of those arising under the order have been placed against handlers in that market as a result of the method of payments. It is also beyond the scope of the order to specify how or when cooperative associations are to distribute proceeds from the sale of milk for its members.

Provision should be made, therefore, for the market administrator to receive payment from handlers and to make payment to cooperative associations for producer-members' milk and to nonmember-producers for their milk. As

opposed to handlers making payment directly to the association for member's milk and paying nonmember-producers directly, this procedure would provide an optional basis for handlers to pay nonmember-producers and would reduce the number of reports and calculations required of handlers, particularly by those who do not choose to pay individual nonmember-producers.

Under the recommended procedure, handlers would pay to the market administrator the classified value of all their milk, unless the handler receives producer milk from nonmembers for whom he has filed a request with the market administrator to make payment directly to such nonmembers. If such a request is filed the handler would be required to make payment to such producers at the uniform price, less properly authorized deductions and marketing service charges, on or before the date by which the market administrator would be required to pay nonmember-producers.

Provision should be made for proprietary handlers to continue deductions from the payments for the milk of association members for supplies or other products customarily supplied such producers. To facilitate the payment procedure, however, the responsibility for the authorization of transportation deductions and for assignments of money with respect to association members' milk should rest in the cooperative association.

The schedule for payments to producers under the fall production incentive payment plan and the method of distributing payments to producers under this plan should be changed.

Producers proposed adding the month of September to the months of October through December as the period for payment out of the producer-settlement fund to effectuate the fall production incentive program. They also proposed changing the distribution of these funds so that 20 percent of them are distributed in September, 30 percent in each of the months of October and November and the balance in December. Under the present provisions, one-third of the fund is distributed during each of the months of October-December. Another producer proposal would change the method of distributing this fund so that it is included in the uniform price rather than in a separate check.

Distribution of the funds under the fall production incentive payment plan in accordance with producers' proposal would tend to encourage a seasonal pattern of production more in line with market requirements and provide a closer seasonal alignment of producer prices with other nearby fluid milk markets. September is one of the months when producer receipts are relatively short in relation to fluid milk sales and should be included in the period for payment under the fall incentive plan. The months of payment and the proportion of the funds which would be distributed during each month under the producer's proposal are nearly the same as for the nearby Dayton-Springfield market with which the Co-

lumbus market competes for milk supplies.

The success of any plan in encouraging a seasonal pattern of production more in line with market requirements depends to a large degree upon the publicity and educational programs which accompany such plans. The issuance of a separate check is not essential to the success of the plan. Adoption of producers' proposal for including payments under the fall incentive plan in the uniform price would result in certain efficiencies in making producer payments by eliminating the issuance of a separate check. It is concluded, therefore, that producers' proposal with respect to both the schedule of payments and the method of payments under the fall incentive plan should be adopted.

Provision should be made for payment of interest on overdue accounts. Such accounts include payments required of a handler or the market administrator to and from the producer-settlement fund and payments to producers for milk. They include payments required on milk sold in the marketing area by partially regulated handlers, and administrative assessment and marketing service payments. The lending of money, whether it be voluntary or involuntary, is an economic service for which the lender should be appropriately compensated, more particularly when the service rendered is involuntary. Furthermore, the requirement that interest be paid on overdue accounts will encourage prompt payments, thereby making for more efficient operations under the order. Dates on which accounts are due under the order allow adequate time for the payment of principal without an interest charge. It is concluded that one-half of one percent, compounded monthly, is an appropriate and economically sound payment for each month, or fraction thereof, that the account is overdue. Under this provision, any unpaid portion of an account would be increased one-half of one percent the first day after it is due. On the same day of each following month, any unpaid portion of the principal and of the interest would be increased one-half of one percent until they both are paid. A similar provision is in a number of Federal milk marketing orders.

One handler, the Ohio State University, objected to being subjected to the payment of interest on overdue accounts on the grounds that payments for milk are from State funds which are not customarily made in less than 2-3 weeks after a voucher is initiated. Such a lapse of time would result in the account of this handler being overdue. Exception is currently made to this practice by the State by permitting payment to producers with rural addresses out of petty cash in accordance with the terms of the order. However, any payment due producers through the producer-settlement fund, or any other payments due under the order to persons with other than rural addresses are delayed. Such an arrangement results in inequities in financing payments to producers and in financing services performed under the order. Furthermore, as the subject han-

dlers utilization is higher than the market average only infrequently, the amount of money required to be paid to avoid overdue accounts would not be appreciably more than that currently paid out of petty cash. It is concluded, therefore, that this handler should not be excepted from the provision requiring payment of interest on overdue accounts. Such an exception would circumvent the intent of the provision.

3. The provisions with respect to the classification of milk transferred between pool plants and transferred or diverted from a pool plant to a nonpool plant should be modified.

Producers proposed that the transfer provisions be amended to assure that transfers between pool plants will not be used as a means of replacing producer milk in the higher priced uses with other source milk. They also proposed to change the method of classifying milk disposed of to a nonpool plant located less than 100 airline miles from the Ohio State Capitol in Columbus so that milk from Columbus pool plants would receive its proportionate share of any Class I milk at the nonpool plant along with transfers of milk subject to other Federal orders, and any Class II milk and Class III milk, after first crediting "Grade A" milk supplied by dairy farmers constituting the regular source of supply for the nonpool plant, to the highest class utilizations at the plant and after crediting the "ungraded" milk received directly from dairy farmers to the highest utilizations other than Class I milk. Milk transferred to a nonpool plant located 100 airline miles or more from the State Capitol in Columbus would be classified as Class I milk.

The present transfer provisions operate to assure that transfers between pool plants will not be used to displace producer milk in the higher priced utilizations if other source milk is received only by the transferee plant. However, the present order does not specifically prevent transfers of milk between pool plants from being classified so as to result in other source milk being classified in a higher-priced class in the transferor plant and producer milk being classified in a lower-priced class in the transferee plant. The transfer provisions should not be so used to reduce the total quantity of producer milk in the higher-priced classes. It is concluded, therefore, that if either or both plants have other source milk, milk transferred between pool plants should be classified so as to allocate producer milk at both plants to the highest valued use classification. This provision would have the same effect as if the allocation provisions were applied to the combined utilization and receipts at the transferor and transferee plants.

Under the present provisions, transfers or diversions of milk to nonpool plants are classified as jointly claimed by operators of the transferor and transferee plants, provided an equivalent amount of milk is used in the claimed classification, regardless of the location of the nonpool plant. There are adequate manufacturing outlets for reserve supplies of producer milk located less than 100 airline

miles from Columbus. Under prevailing conditions, movements of milk 100 miles or more will be for the purpose of supplying milk for fluid disposition and should be classified as Class I milk. Such an automatic classification is reasonable and will eliminate the possibility of undue expenditures in auditing the classification of transfers to distant nonpool plants.

The present transfer provisions would leave the way open for milk transferred to a nonpool plant located less than 100 miles from Columbus to be used in a Class I product and accounted for in a lower-priced class so long as an equivalent amount of milk is used by the nonpool plant in the lower class. Thus, in a combination plant, where both graded and ungraded milk is received, ungraded milk may be used in the lower-priced classes while milk from the Columbus market is used in Class I and the milk accounted for inversely in relation to its actual usage. Producer milk so accounted for returns to producers less than its classified value and at the same time gives operators of nonpool plants a competitive advantage over regulated handlers in common sales areas.

It is concluded, therefore, that the Class I sales of the nonpool plant which are in excess of receipts of Grade A milk from dairy farmers who are regular sources of supply for such plant should be credited to milk transferred to such plant from the regulated market. However, such Class I sales should not be used as a basis for duplicating the Class I classification of milk transferred to the nonpool plant from other plants regulated by this and other Federal orders.

It is reasonable that the amount of milk transferred to such plant and classified as Class I milk for any one regulated market be not less than the market's pro rata share of the net Class I sales in such nonpool plant. The pro rata share should be based on the total receipts of milk at such nonpool plant from all plants subject to the pricing and payment provisions of an order issued pursuant to the Act.

All milk disposed of from Columbus pool plants to nonpool plants which is not classified as Class I milk should be classified as Class II, Class III, or Class IV milk depending on the utilization and allocation of receipts of milk at such nonpool plant. In the case of Class II and Class III milk, receipts (both graded and ungraded) from local dairy farmers should be assigned to these utilizations prior to the assignment of milk transferred to such plant. This procedure would prevent the displacement of the milk of local dairy farmers in these preferred manufacturing uses and would contribute to the orderly marketing of reserve supplies to nonpool plants.

The recommended method of classifying transfers and diversions of milk to nonpool plants would safeguard the primary functions of the transfer provisions of the order in promoting orderly disposal of reserve supplies and at the same time assure that transfers of milk to nonpool plants are classified in accordance with the utilization of the milk. It would provide a degree of protection to the market during periods of short

supply which might be caused by withdrawals of milk. Any undue price incentive would be removed for pool plants to supply milk at less than the order Class I price to nonpool plants, engaged in multiple operations, for fluid disposition in other markets. Provision is made for equality of treatment of handlers both under the Columbus and other orders in the classification of milk transferred to a common nonpool plant.

Milk disposed of in eggnog and prepared milk shake mixes, including malt flavored mixes, should be classified as Class I milk (and included in the definition of a fluid milk product). Milk disposed of in eggnog is currently classified as Class II milk and milk disposed of in prepared milk shake mixes is classified as Class III milk.

Economic and marketing conditions which affect milk disposed of in eggnog and milk shake mixes are similar to those conditions which affect milk currently classified as Class I. The milk used to produce these products must be Grade A milk. Generally, these products are produced in the handler's fluid milk plant. They are distributed on retail and wholesale routes in a fluid or semi-fluid form. Along with fluid milk, they are consumed in fluid form. In relation to volume, they are relatively high value products. Milk used in eggnog and milk shake mixes can and should contribute as much to the cost of obtaining an adequate supply of Grade A milk for the market as milk disposed of in the present Class I products. With the proposed changes in butterfat differentials, there will be little difference in the costs of milk for these products as compared with the present classification and pricing arrangement.

The classification provisions should be clarified by specifying that ending inventory of fluid milk products and sterilized cream are in Class I milk, that milk disposed of to commercial food manufacturers during the months of April through July is Class II milk, and that milk disposed of in ice milk is Class III milk. These are clarifying changes and would not change the present application of the order.

The shrinkage provision should be modified to prorate shrinkage between producer milk and other source milk received in the form of a fluid milk product. The present provision permits total shrinkage in a handler's plant to be prorated between producer milk and total other source milk in the plant. Such a proration amounts to an unreasonable shrinkage allowance on other source milk received in the form of a manufactured product, particularly since a skim equivalent basis of accounting is followed.

The order should contain more precise language with respect to accounting for manufactured products which are received in the plant during the month to specify that both receipts and utilization of such products are accounted for on a milk equivalent basis. Such a method of accounting is provided for in the present order by specifying a "used-to-produce" method of accounting in the class definition and in the paragraphs for computing the amount of milk in each class. However, a lack of uniform

application throughout the accounting procedure of the skim equivalent method of accounting arising from the existing language has caused concern to handlers. The order should provide, therefore, that in accounting for the use or disposition of condensed or dried milk or skim milk, the whole milk or skim milk equivalent of such condensed or dried milk will be used.

4. The method of determining class prices should be changed so that the prices are announced for milk containing 3.5 percent butterfat with appropriate butterfat differentials. Under the present order hundredweight class prices are announced separately for skim milk and butterfat.

Milk prices are generally quoted throughout the dairy industry on a whole milk basis with butterfat differentials. Under the Columbus order, uniform prices to producers are computed and announced on a whole milk basis. Hence, under the recommended method of announcing class prices, Columbus order prices would be expressed in such a form as to facilitate comparisons with prices in other markets, both regulated and unregulated. Producers could more easily interpret their blend price in terms of the class prices to handlers.

Although a new system for calculating class prices per hundredweight for milk will be used, for convenience in computing handlers' costs, the use of separate class prices for skim milk and butterfat, reflecting the levels established by the prices per hundredweight of milk, will be continued.

Adoption of the recommended method of computing and announcing class prices would, of course, be a mechanical change and would not necessarily entail changes in the costs of butterfat and skim milk to handlers. However, butterfat differential levels for the various classes need to be revised to reflect more appropriate butterfat and skim milk values than exist under the present order. Class I and Class II butterfat values are determined now by applying the percentage that the value yielded by the butter element of a butter-nonfat dry milk formula is of the price yielded by the complete formula to the respective class prices computed for milk containing 3.5 percent butterfat. Skim milk prices are determined by the same method. Because the whole milk prices are comprised of the basic formula price, class differentials, and the supply-demand adjustment and because the butter element of the butter-powder formula at current price levels constitutes about 74 percent of the yield of the formula, relatively high butterfat and low skim milk prices result under the present order. The proportion of the total butterfat from producer milk which is utilized in Class I milk has shown a downward trend. The trend in the utilization of skim milk, on the other hand, has been upward.

Expressed in terms of 92-score creamery butter at Chicago the Columbus Class I butterfat differential for 1957 was 0.157 and the Class II butterfat differential was 0.143 per one-tenth of one percent butterfat. Class I butterfat differentials under the Cleveland and North Central

Ohio orders are 0.130 times the price of 92-score creamery butter at Chicago, and, under the Dayton-Springfield order, about 0.127 times the Chicago butter price. The Class I price for skim milk is relatively low in the Columbus market as compared with prices under other surrounding Federal orders.

It is concluded that the Class I and Class II butterfat differentials should be 0.0172 times the Class I price. Based on 1957 class prices and butter prices, such a differential is equivalent to a differential of about 0.131 times the Chicago butter price. The recommended Class I butterfat differential would, therefore, be in close alignment with the Class I butterfat differentials in nearby Federal order markets. Both Class I and Class II butterfat would share, to a degree, the additional value of Class I and Class II milk over Class III milk. Provision should be made to assure that the Class I and Class II differentials would not be lower, under any circumstances, than the revised Class III differential, which has been found to be at a reasonable level in relation to prices for Grade A butterfat from competitive sources. (The Class III price and butterfat differential are discussed under issue No. 5.) As compared to present butterfat and skim milk values, the recommended level of the butterfat differentials would reflect the increased demand for skim milk in fluid uses relative to butterfat. The method of expressing the butterfat differential in terms of the Class I price should be used so that both skim milk and butterfat would share in class price changes not associated with changes in central market prices for skim milk and butterfat. This would contribute a desired degree of stability in the relationship of skim milk to butterfat prices. Otherwise such changes as supply-demand adjustments would be reflected wholly in the price of skim milk.

The Class IV butterfat differential should be the Chicago butter price times 0.115. The butterfat differential computed on basis of the skim and fat prices of the present order is 0.112. Producers proposed that the differential be 0.120 times the Chicago butter price.

Evidence presented at the hearing is inadequate to form a basis for increasing the Class IV butterfat differential to 0.120 times the Chicago butter price. However, butterfat differentials in the manufacturing milk classes under the Cleveland and North Central Ohio orders are at the level of 0.115 times the Chicago butter price. Inasmuch as butterfat prices generally follow central market prices and there are adequate outlets for butterfat available in and near Columbus for the disposal of reserve butterfat for butter produced from sweet cream, it is reasonable that the Class IV butterfat differential under the Columbus order be not less than those under the Cleveland and North Central Ohio orders.

The present formulas for computing hundredweight prices for skim milk and butterfat in Class IV milk yields prices, on the basis of milk containing 3.5 percent butterfat, approximately equal to the butter-nonfat milk formula used in

the basic formula, minus 12 cents. To reflect the higher value for butterfat and to avoid decreasing the value of skim milk during the short production season as a result of the recommended butterfat differential, the Class IV price for milk containing 3.5 percent butterfat should be the price resulting from the butter-powder formula used in the basic formula minus 5 cents. As stated elsewhere in this decision, and particularly under a marketwide pool, the function of the pricing plan will be served best by maintaining the Class IV price at the highest possible level that will permit the orderly disposal of reserve supplies of milk and assist in allocating the total supplies among plants in accordance with the requirements in the higher valued uses. Accordingly, the proposal should strengthen the effectiveness of the order pricing plan.

Class prices for skim milk and butterfat are announced under the present order on or before the 10th day after the end of the month to which they apply. Hence, producers know the price they will receive for their milk and handlers know the price they will pay only after the milk is sold.

Even though formula prices and manufacturing milk prices on which the class prices are based are relatively constant on a month-to-month basis, the supply-demand adjuster may cause comparatively large short-run changes in the Class I and Class II prices under the recommended method of pricing. Data for computing the formula prices and the manufacturing milk prices used in class pricing under the order are available early enough after the end of the month to which they apply to permit announcement of the order prices on or before the 6th day after the end of the month. The supply-demand adjustment may be computed on the basis of producer receipts and utilization data for the 2d and 3d preceding months rather than the current and 1st preceding months, the monthly data now used in computing the supply-demand adjustment, without any significant loss of accuracy in predicting the current supply-demand situation in the market.

It is concluded, therefore, that Class I and Class II milk prices should be announced on or before the 6th day of the month and Class III and Class IV milk prices should be announced on or before the 6th day after the end of the month. Computation of Class I and Class II prices should be changed so that basic formula data used are for the immediately preceding month and supply-demand data used are for the 2d and 3d preceding months. However, the order should continue to specify that the Class II price is computed separately, rather than subtracting the constant amount from the Class I price. Even though the Class II price yielded by the two methods is the same under both the present and recommended orders, future consideration of either or both class prices may be expedited by retaining the separate computations.

A proposal was made at the hearing by producers to increase the Class I price differential. It was contended that the

supply of producer milk during the low production season was extremely close to the requirements for fluid disposition. Although this is true as indicated by the analysis reported herein under Class III pricing, the supply-demand adjuster is for the purpose of increasing or decreasing Class I and Class II prices in accordance with the relationship of producer supply to the requirements of milk for fluid disposition. That the supply-demand adjuster is performing this function is shown by the fact that an average of 20 cents was added to the monthly class prices in 1957 and nearly 15 cents during the first 8 months of 1958. The supply of producer milk in relation to Class I sales during the first 8 months of 1958 was somewhat higher than for the corresponding months a year ago. It is concluded that the Class I price differential should not be changed.

The "standard utilization percentages" of the supply-demand adjuster should be revised to conform with the recommended change of computing the "current utilization percentages" and to conform with the changed seasonal pattern of producer milk deliveries for the Columbus market.

The supply-demand adjuster in the present order was made effective January 1, 1957. Standard utilization percentages adopted at that time were, of necessity, developed on basis of the historical seasonal pattern of producer receipts and Class I utilization for the market. During the past four years, a trend toward higher production in the months of October-December and lower production in the months of March-May has existed. Producer milk deliveries during the months of October-December have made up a higher proportion of the annual deliveries each year (October-September) than they made up during the preceding year. In 1954-1955, average daily producer receipts during these months were 91 percent of the annual daily average and in 1957-1958 the October-December average was 98 percent of the annual average. During the same four-year period a trend towards a lower seasonal production during March-May is present. In 1954-1955, daily average producer receipts during these months were about 111 percent of the annual daily average, and in 1957-1958 the March-May average was about 105 percent of the annual average. Official notice is hereby taken of the "Computation and Announcement of the Uniform Price", January 1957 through September 1958, issued monthly by the market administrator of Order No. 74.

This changed seasonal pattern of production, in conjunction with a relatively stable seasonal pattern of Class I utilization, has caused the supply-demand adjustment to be relatively higher during some of the flush production months of the spring as compared to the adjustments during the months of shorter production of the fall and winter. This, of course, works counter to the fall production incentive program for encouraging a more even seasonal pattern of production and in bringing market supplies more in line with fluid milk requirements. While it is not the purpose of the

supply-demand adjuster to encourage a more even seasonal pattern of production, it should not work counter to such adjustments.

To avoid changing the level of the supply-demand adjustment, the level of the standard utilization percentages was adjusted, on the average, less than one-half of one percent. This adjustment compensates for changing the classification provisions to include milk used to produce eggnog and prepared milk shake mixes in Class I. Milk disposed of to food processors in bulk during the months of April through July, and which is Class I milk under the present order should continue to be included in the computation of the current utilization percentages.

A proposal to adopt a supply-demand adjuster under which the amount of the adjustment would be determined on basis of deviations of the current utilization percentage above or below a "minimum and maximum" standard utilization should be denied. One of the primary objectives of the proposal was to attain more stability in the adjustment. The primary difference in the "bracket method," i.e., the method used in the present order, for determining the supply-demand adjustment and the proposed method is that the bracket method is more effective in minimizing adjustments caused by random and short-run movements of the supply-demand relationship, which are not accounted for in the normal seasonal pattern. The evidence does not show that the proposal would do this as well as the present provision.

In view of the above stated considerations, it is concluded that the bracket method of determining the amount of the supply-demand adjustment should be retained. The following standard utilization percentages should be adopted:

Month for which a price is being computed:	Standard utilization percentage
January	127
February	129
March	126
April	124
May	125
June	130
July	141
August	160
September	156
October	137
November	128
December	130

These values take into account the existing seasonal pattern of production and the effect of classifying in Class I milk used to produce prepared milk shake mixes and eggnog. They also allow for some further leveling in the seasonal pattern of production. The recommended supply-demand provisions would result in approximately the same average annual price adjustments over the long-run as would result under the present order.

In view of the relatively low Class I price differential under the Columbus order as compared with the differentials under several neighboring orders, particularly during the fall and winter months, the present provisions with re-

spect to the pricing of milk disposed of in another marketing area should not be changed at this time.

Producer butterfat differential. The method of computing the producer butterfat differential should be changed. Under the present order, the producer butterfat differential is the weighted average of the Class II, Class III and Class IV butterfat differentials, as derived from the respective hundredweight class prices of skim milk and butterfat and weighted by the percent that producer butterfat classified in each of these classes is of the total producer butterfat in the three classes.

In view of the recommendation that the Class I and Class II differentials be reduced and brought in closer alignment with market values for butterfat, the proposal for a weighted average of the butterfat differentials in each of the four classes should be adopted. Changes in the relative proportions of the total butterfat in producer milk used in each class will be reflected in the producer butterfat differential.

Equivalent prices. Provision should be made for the use of an equivalent price if for any reason a price quotation required by the order for computing class prices or for other purposes is not available. A particular price quotation required under the provisions of the order may be discontinued or not available in the manner or at the time described by the order. Should such contingencies materialize, equivalent pricing would permit the intent of the pricing provisions of the order to be carried out without interruption until the order could be amended.

5. The pricing of Class III milk should be revised.

Class III milk is skim milk and butterfat used to produce frozen cream, condensed milk, ice cream mix, ice cream, sherberts and other frozen desserts. Class III milk is priced (on the basis of milk containing 3.5 percent butterfat) by adding 30 cents to the basic formula price during the months of April through July and 60 cents in other months. Class III milk prices for the months of August through March are increased or decreased by the same supply-demand adjustment as prices for Class I and Class II milk. Hundredweight prices for butterfat and skim milk are determined from the resulting 3.5 percent price by applying the ratio that the butter and skim milk solids values contribute to the alternative basic formula price computed from the open market prices of such products.

Certain handlers proposed that the application of the supply-demand adjustment be eliminated from the Class III price formula and the differentials over the basic formula price be changed to 10 cents for the months of April through July, 30 cents for the months of January, February, March, August and September and 40 cents for October through November.

Proponents alleged that a reduction in the Class III price is necessary to bring the costs of fat and solids for ice cream manufacture in alignment with the cost of ice cream ingredients made from

Grade A milk from outside sources and to place manufacturers of ice cream using Columbus producer milk or ingredients manufactured therefrom on a competitive cost basis for ingredients with other Columbus distributors of ice cream.

Ingredients for ice cream distributed in Columbus must be made from Grade A milk. In addition to Columbus producer milk, approval has been granted by the Columbus Board of Health to certain plants which are approved to supply fluid milk to the Cleveland, Ohio, market as sources of supply for ice cream ingredients. Eight plants located in Ohio, Indiana, and Michigan have been approved either to distribute ice cream or to supply ice cream ingredients.

Ice cream is manufactured in the fluid milk plants of certain handlers. In other fluid milk plants, including one operated by the proponent for the reduction of the Class III price, condensed milk and cream are produced and supplied to ice cream plants which are not subject to regulation. Ice cream production has been discontinued in one of the proponent's fluid milk plants and a separate new plant has been established with a substantial increase in manufacturing capacity. Milk is not received directly from dairy farmers at the latter plant. This proponent has continued to receive in his fluid milk plant producer milk formerly needed for the ice cream operation.

This proponent stated that he did not intend to take on additional producers at his fluid milk plant to supply ice cream ingredients for the ice cream plant. From the capacity of the new plant it may be expected, however, that the output of ice cream will increase. Other markets also are supplied ice cream from this plant. There was no evidence to indicate a shortage of supplies of ice cream ingredients from Grade A milk from outside sources. With such supplies available, there is no urgent reason to provide a pricing scheme which in the long run will develop producer milk for the pool to supply the requirements for ice cream in this market and perhaps for other markets as well. With a given supply of producer milk, however, the returns to producers will be increased if reserve supplies of milk in excess of Class I and Class II requirements are disposed of as Class III rather than as Class IV milk. The problem is to establish a price for Class III milk which will be low enough to accommodate the use of reserve supplies in such class and be high enough not to encourage handlers to bring additional milk into the pool for uses in this class. Important also is the need to promote the allocation of available supplies of producer milk among handlers to meet their requirements for Class I and Class II uses.

The proponent indicated that the supply of producer milk at his fluid milk plant is gradually approaching a closer relationship to the Class I and Class II requirements. There was no evidence, however, to indicate that any reserve milk is readily available to other plants which may have need for it in Class I and Class II uses. The allocation of the

available supply of milk to plants in accordance with their Class I and Class II requirements is in the interest of producers and the market in general. The pricing of Class III and Class IV milk at the highest level possible and yet permitting the orderly disposal of reserve supplies will assist in the proper allocation of milk and is the ultimate objective of the pricing plan.

Information was submitted by one of the proponents on the costs of cream and fresh condensed milk purchased by the ice cream plant from outside approved sources during 1957. Although this price information was available for limited quantities in some months, because of the relative stability exhibited in the figures from shipment-to-shipment and month-to-month, it is concluded that, on the average, these prices are reliable for use in the analysis which follows. Cream and condensed milk were purchased in bulk tank quantities delivered to the ice cream plant. Additional information was adduced at the hearing on yields of solids from skim milk, costs of receiving and processing skim milk, and container, storage and transportation costs for sweetened condensed milk. It was stated that 340 pounds of skim milk are used to produce 100 pounds of condensed milk containing 29.5 percent solids. Costs of receiving, separating, condensing of skim milk and transportation of the fresh condensed milk to the ice cream plant were equal to \$1.14 per hundredweight of condensed milk. Three cents per pound of butterfat was presented as the cost of deriving pasteurized cream from producer milk. These figures result in a total cost of 44 cents per hundredweight for receiving producer milk with an average test of 3.8 percent butterfat and processing such milk into skim condensed milk and cream. These cost figures appear to be reasonable for appraising the Class III price with the cost of ice cream ingredients from outside sources.

The above mentioned data were used to compute milk, skim milk and butterfat prices for comparison with the present order prices. Application of these data resulted in a value for 3.5 percent butterfat content milk ranging from \$3.65 to \$3.68 during the months of April through July 1957 as compared with \$3.48 to \$3.49 under the present order. During the 8 months of January through March and August through December 1957 the computed prices fell within a range of \$3.71 to \$3.82 with an average of \$3.76. Order prices ranged from \$3.92 to \$4.15 and averaged \$4.04. In converting the prices of solids and fat from outside sources, no allowance was made for container or storage costs because the ingredients purchased were in the form of cream and plain condensed skim milk delivered by tank truck.

The computed price of \$3.66, for the months of April through July, was equal to 51 cents over the basic formula price of \$3.15 during these months. The price of \$3.76 computed for the remaining 8 months was equal to 54 cents over the basic formula price of \$3.22. The present differentials under the order are 30 cents during April through July and 60

cents during the 8 months of, August through March. Therefore, the differentials contained in the present order result in prices for 3.5 percent milk which are 6 cents per hundredweight higher than the prices computed for the same test of milk from the solids and butterfat prices from outside sources during the August-March period, and 21 cents lower during the April-July period. In addition to the stated differentials, the Class III order price for 3.5 percent milk was increased by the supply-demand factor an average of 22 cents for the 8 months period August through March. No supply-demand adjustment is applied in other months. Under the present method of pricing, about 74 percent of the supply-demand adjustment is reflected in the Class III butterfat price and the balance, approximating 6 cents per hundredweight in 1957, in the price of skim milk.

The average price computed for skim milk for the 8 months of January through March and August through December, 1957 was \$1.14 per hundredweight. This was 4 cents higher than the average Class III price for skim milk under the order for the same period. During the months of April through July, the order price for skim milk averaged 95 cents per hundredweight while the equivalent price for skim milk from solids purchased from outside sources was equal to \$1.10 or 15 cents higher than the order price.

The "Computation and Announcement of the Uniform Price", January 1957 through August 1958, of which official notice has been taken, supplements the summaries in the record showing receipts and utilizations of skim milk and butterfat by classes. During the previously stated 8-month period of 1957, 92 percent of the skim milk contained in producer milk was utilized marketwide in Class I and Class II milk. In addition, between 1 and 2 percent of total receipts represented plant loss. The remaining 6 to 7 percent of the skim milk in producer milk was utilized in nearly equal amounts in Class III and Class IV milk. Therefore, the opportunity for shifting of the utilization of reserve supplies of skim milk from Class IV to Class III and increasing the returns to producers during the period of August through March is rather limited. During the months of April through July of 1957, approximately 80 percent of the skim milk contained in producer receipts was utilized as Class I and Class II milk. Of the remaining 20 percent, approximately two-thirds was utilized in Class III milk and one-third in Class IV milk. During these same months of 1958, however, approximately two-thirds of the skim milk utilized in Class III and Class IV milk was utilized in Class IV while one-third was utilized in Class III. Sweetened condensed milk was produced for storage in 1957 by one proponent whereas this was not the case in 1958.

On the basis of the container and storage costs placed in the record, it would be necessary to reduce the Class III skim milk price to the same or even a lower level than the Class IV price in order to result in a cost of solids from stored

sweetened condensed milk no higher than the cost of solids in fresh condensed milk purchased from outside sources at the time of use. A reduction of the Class III skim milk price to the Class IV level during the summer months would reduce the total returns to producers. The pricing of skim milk to afford solids at a competitive level with solids from outside sources should make possible use of reserve supplies of milk for current requirements in Class III rather than in Class IV milk. The potential demand locally for ice cream ingredients is sufficient to utilize the present market reserves of Grade A skim milk on a current basis. The pricing arrangement for skim milk should make possible the orderly disposal of reserve supplies over Class I and Class II requirements, afford maximum returns to producers and at the same time not encourage the development of additional producer milk as a source of solids for ice cream manufacture.

It was proposed to change the seasonal pattern of Class III pricing to provide three levels of pricing instead of two. The present seasonal price system for skim milk and butterfat results in a reasonably uniform relationship with the corresponding computed costs of skim milk and butterfat from outside sources. There appears to be no need for changing the present seasonal pattern of Class III prices.

It is concluded, therefore, that prices for skim milk should be changed to reflect a cost for skim solids in close alignment with the cost of solids from outside sources. To accomplish this in conjunction with the butterfat differentials (recommended herein) the Class III differentials should be 50 cents during April through July and 55 cents during August through March. In order to continue the appropriate relative levels and seasonal pattern of skim milk prices under a system of pricing with butterfat differentials, where the price for skim milk is a residual value, the order would need to be changed to apply 26 percent; previously shown, of the Class I and Class II supply-demand adjustment to the price for Class III milk. There is no sound reason to provide that the basic Class III price level be decreased if the supply-demand ratio should result in negative adjustments.

On the basis of the 1957 level of supply-demand adjustment of 22 cents, an increase in the average level of producer milk receipts in relation to Class I and Class II sales, could reduce the relative level of the Class III skim milk price a maximum of 5.7 cents per hundredweight. To the extent the price is reduced with increased supplies of milk in relation to Class I and Class II sales, handlers would have some incentive to use more milk in Class III uses. A reduction of more than this amount would result in prices too low in relation to costs of solids from outside sources. Even the possibility of a greater reduction in skim milk prices in conjunction with the butterfat differentials recommended herein, might cause handlers to expand Class III operations through the development of additional supplies of

producer milk. It is concluded, therefore, that 26 percent of any plus adjustments (only) of the supply-demand adjustment should apply to Class III milk.

The present method of determining hundredweight prices for butterfat on the basis of the proportion of the total value that butter contributes to the butter-skim milk solids formula price should be changed. It has been decided elsewhere in this decision that class prices should be announced for 3.5 percent milk with appropriate butterfat differentials.

The Class III price for butterfat is lower during the months of April through July and considerably higher during other months of the year than prices for alternative supplies of butterfat from Grade A sources.

The order price per hundredweight of butterfat in the months of April through July 1957 averaged \$73.36 in contrast with a comparative net cost of butterfat in the form of cream from outside sources of \$74.36 (after an allowance for the value of solids in cream and a processing cost of 3.0 cents per pound of fat). During the months of January through March and August through September of 1957, the order price for butterfat was \$84.93 per hundredweight as compared to a computed price of \$76.02 from outside sources.

Some of the effects of this pricing arrangement are reflected in the utilization of the butterfat from producer milk. During 1957, nearly 20 percent of the butterfat contained in producer milk was utilized in Class III and Class IV milk. During the months of April through July the ratio was 27 percent and in other months 17 percent. Of the 27 percent used in Class III and Class IV milk during the April-July period (when butterfat prices from Class III milk were relatively low), about three times as much fat was used in Class III milk as in Class IV milk. This was in contrast to utilization in the other 8 months of the year when Class III butterfat prices were relatively high and 4 times as much butterfat was used in Class IV as in Class III milk. Because the reserve supply of butterfat in relation to Class I and Class II needs is relatively larger than for skim milk and because of the higher proportion of butterfat now being used in Class IV milk, the possibility of increasing the returns to producers from increased sales of butterfat in Class III milk is potentially much greater than for skim milk.

The present pricing arrangement for Class III milk is equivalent to applying, on the basis of 1957 prices, a butterfat differential equal to the price of 92-score butter at Chicago times 0.140 during the months of August through March and 0.122 during the months of April through July. The present prices for butterfat fail to reflect competitive prices for butterfat in Grade A cream from outside sources both as to level and seasonal pattern. Prices for butterfat in the Grade A cream purchased from outside sources bears a fairly constant relationship to central market prices for butter. The unadjusted prices reported were between 129 to 130 percent of the price of

92-score butter at Chicago during 8 months of 1957 and averaged 129.7 percent for the year. Prices during October, November and December were above this average and during April, May and July such prices were below the average.

The application of the computed hundredweight prices for skim milk and butterfat from outside sources results in butterfat differentials equivalent to 0.124 times the price of 92-score butter at Chicago for the months of April through July and 0.126 times such price during other months of the year. It is concluded that these ratios should be adopted as the butterfat differentials for adjusting 3.5 percent prices for Class III milk. These differentials together with those recommended for Class I and Class II butterfat will bring the value of butterfat in all three classes for which Grade A milk is required in much closer alignment both with respect to annual level and seasonal changes. These recommended changes should encourage greater utilization of the available supplies of butterfat from producer milk in the higher priced classes. The general level of butterfat differentials also will be more nearly in accord with corresponding butterfat differentials in other Ohio markets.

6. A schedule of location adjustments applicable to milk received at pool plants should be established in relation to the distance the plants are located from Columbus.

The present order provides a location adjustment of 17 cents per hundredweight on all whole milk moved directly to the marketing area from a fluid milk plant located more than 40 miles from Columbus. Under these provisions, class prices and uniform prices to producers at fluid milk plants located at appreciably greater distances from the marketing area would be the same as class prices and uniform prices at plants located just outside the 40-mile radius.

Milk at farms or at plants has a progressively lower value with respect to the Columbus market as such farms or plants are located farther from the market. The difference in value is related to the cost of transporting the milk from the respective locations to the market. Even though at the time of the hearing, there were no plants at which location adjustments would apply, the order should contain appropriate provisions to recognize such difference in value at pool plants, particularly in view of the recommended changes in the marketing area. Such a provision would provide a cost of milk among plants and returns for milk among producers in accordance with its economic value to market, if plants located at greater distances become associated with the market. This should be accomplished by a schedule of location adjustments applying at plants in accordance with their location in relation to Columbus.

A rate of 1.5 cents for each 10 miles that milk is moved from a supply plant or a distributing plant to the marketing area should be the basis for extending the location differentials. The rate approximates the cost of moving milk such distances to the marketing area from

distant points by efficient means and conforms closely to the rate applied under other Federal orders. The rate should apply only at plants located more than 90 miles from Columbus and should be in addition to the amount of the adjustment to plants located in the 80-90 mile zone. Plants located 80 but less than 90 miles from Columbus should receive a fixed differential of 15 cents per hundredweight of milk to which location differentials apply. No location adjustment should apply at plants located less than 80 miles from Columbus. This is appropriate for the Columbus market because of the relatively low Class I price differential under the order as compared to differentials in orders for nearby markets. It also recognizes the location of plants which may become regulated as a result of the recommended expansion of the marketing area. It would provide a maximum degree of uniformity in Class I prices at plants under this and other orders which have common sales areas.

Such location adjustment should apply to all milk moved to the marketing area from supply plants in the form of a fluid milk product which is assignable to Class I and Class II milk after first assigning direct receipts from producers, receipts of fluid milk products and Class II products from other pool plants, located less than 80 miles from Columbus, to the available Class I and Class II utilization at the plant to which the milk is moved.

The location adjustment provisions should also be expanded to apply to all milk disposed of as Class I and Class II milk from a pool plant located more than 80 miles from Columbus. Such applications of the location adjustment would recognize the functional relationship of supply plants to the market and price Class I and Class II milk at all pool plants in relation to its value for consumption in the marketing area.

7. New definitions of "cooperative association", "fluid milk product", "pool plant", "nonpool plant", "producer-handler", "Chicago butter price," and "nonfat dry milk price," should be added to the order to facilitate drafting other provisions of the order and to clarify their application.

Definitions for "fluid milk product", "cooperative association", "Chicago butter price", and "nonfat dry milk price" should be provided to eliminate the necessity for repeating language each time reference is made to one of these terms. A fluid milk product should be defined to include the same milk and milk products as are included in Class I milk, thus making the definition useful as a specialized reference in other sections of the order—particularly the reporting and accounting sections.

The definition of a pool plant and a producer-handler should be added and the definition of a fluid milk plant changed to describe more clearly the different categories of persons and plants subject to the order, according to the type or degree of regulation applicable to each.

A fluid milk plant should be defined to include any plant which performs as either a distributing plant or a supply

plant for the marketing area. Under the present definitions, a fluid milk plant is subject to the full regulation of the order. Any plant engaged in the receipt and processing of milk may become a fluid milk plant by disposing of any milk on a route in the marketing area. A pool plant should be defined as a fluid milk plant which meets certain minimum performance requirements. The term pool plant should include those plants which would be subject to full regulation. It is especially important that certain performance requirements be specified, in view of the recommended extension of the marketing area. This is to avoid dissipating the price differential necessary to encourage the production of an adequate supply of Grade A milk for the market, on the one hand, and to avoid fully regulating plants which are not primarily associated with the Columbus market on the other hand. Full regulation should be extended only to those plants primarily engaged in the fluid milk business. Full regulation should not be extended to those plants having only an incidental amount of sales in the marketing area. It is concluded that a distributing plant should be a pool plant if not less than 50 percent of the Grade A milk received from producers and other plants is disposed of in Class I and Class II milk and more than 15 percent of such receipts are disposed of on routes in the marketing area. The 15 percent requirement would exempt from full regulation those plants having only incidental sales in the marketing area, as recommended to be expanded.

A fluid milk plant which performs as a supply plant should be a pool plant if not less than 50 percent of the producer receipts at such plant are moved to a distributing plant which is a pool plant. If a supply plant has met the shipment requirements during the immediately preceding period of August through November, such plant should be a pool plant during the months of March through July, unless the operator of the plant files a request for nonpool plant status with the market administrator by March 1 prior to such period. This would provide a reasonable and equitable pooling arrangement for those producers who ship milk to a supply plant which furnishes milk to the marketing area primarily during the fall and winter months when direct shipped milk is more likely to be inadequate to fulfill market needs.

Except for the plant operated by the Ohio State University, the recommended definition of a pool plant would include all plants included by the present definition of a fluid milk plant. Fluid milk distributed from the Ohio State University plant is limited to routes operated on the Campus. During months when school holidays and vacations occur, particularly the summer months, the proportion of receipts at the plant utilized in Class I and Class II frequently is less than 50 percent. During other months the utilization is relatively high. Inasmuch as routes from this plant are not operated primarily in competition with routes of other handlers, partial regulation should not be applied to the

plant or full regulation merely on a seasonal basis. On the other hand, a low utilization at the plant should not be permitted to dilute the Columbus pool on a permanent basis. It is concluded, therefore, that the 50 percent Class I and Class II requirement for pool plant status should apply only during the months of January, February, October and November to a plant from which routes service only the Ohio State University Campus. This is in accord with the historical pattern of utilization in this plant.

A producer-handler should be defined to include any person who processes milk from his own farm production and distributes any portion of such milk on routes in the marketing area, but who receives no fluid milk products from other dairy farmers or nonpool plants. The milk production, processing and distribution should be the personal enterprise, and at the personal risk of such person. In the present order, a producer-handler is included under the definition of a producer. Receipts of milk from a nonpool plant are not precluded as a basis for maintaining a producer-handler status and the nature of the operation is not described. A producer-handler is only subject to partial regulation in that he is required to make reports, at the request of the market administrator, for the purpose of determining his status under the order. He is exempt from all payment, pricing, pooling and classification provisions of the order. Adoption of the recommended definition is necessary, therefore, to assure that such a person will not use his exempt status under the order as a means of expanding Class I sales from other than his own production or transfers from pool plants, thus displacing sales of producer milk by fully regulated handlers.

The definition of a producer and producer milk should be changed to generalize the reference to "health authority" and to specifically deal with diverted milk. Under the present definition, producer milk must be produced under a permit issued by the appropriate health authorities in the marketing area. Since, under this definition, the method used by the health department to evidence approval of a dairy farmer to supply milk to the marketing area may determine whether or not such dairy farmer is qualified as a producer under the order and since it is not the purpose of the order to enforce health department regulations, the reference to "health authority" should be changed so that the determining factors are that the dairy farm be approved by a duly constituted health authority and that the responsible health authority in the marketing area permit the milk to be labeled and disposed of as Grade A milk in the marketing area. The portion of the definition of a producer which provides for including dairy farmers not holding a permit issued by a health authority in the marketing area is no longer needed as a part of the definition.

The present order permits the diversion of producer milk to a nonpool plant by a cooperative association and diver-

sion by proprietary handlers to pool plants. The privilege of diversion accommodates the movement of milk between pool plants and the economical disposal of reserve supplies of milk.

Producers contended that provision for diversion of producer milk by proprietary handlers to nonpool plants is unnecessary except during the months of seasonally high production of April, May, June and July. In view of the fact that proprietary handlers will be required, as set forth later, to notify the cooperative prior to diversion of the milk of producer-members, proprietary handlers should be permitted to divert milk to nonpool plants during all months of the year. This will facilitate the orderly disposal of any reserve milk which at times may be accumulated on weekends or as a result of decreased fluid sales over holidays. There is no sound reason, however, to permit continuous diversion to nonpool plants either by the cooperative association of proprietary handlers in months other than those in the seasonally high production period. It is concluded, therefore, that unlimited diversion of producer milk should be permitted during April through July. During other months, the total monthly deliveries of milk of a dairy farmer whose milk is diverted on more than one-half of the days of delivery during the month should not be producer milk under the order.

Producers proposed that proprietary handlers be required to give the association not less than 24 hours notice before diverting milk of producer-members to a nonpool plant. Under the proposal, this would be a requirement for diverted milk to qualify as producer milk and for the dairy farmer to qualify as a producer. Prior notice would facilitate the cooperative's efforts to divert producer milk to the highest-priced uses possible and would expedite its program for check testing and weighing members milk. With the relatively narrow ranges of variation in producer receipts and fluid milk sales on a day-to-day basis, the requirement of a 24-hour notice, prior to diversion, would not seriously impair the production planning of handlers. The requirement of a 24-hour notice prior to diversion should be adopted. However, the requirement should be in the form of a report from the handler to the cooperative association rather than as a part of the producer milk definition. In this form, failure to comply with the requirement by the handler within the specified time would not prevent the pooling of the diverted milk and would remove the need for exact administrative determination of the time element.

The definition of other source milk should be clarified and changed to accommodate the proper accounting for and allocation of milk, particularly milk and butterfat in manufactured products accounted for on a "used-to-produce" basis which are used or reused during the month. This definition should include all receipts during the month in the form of a fluid milk product, except (1) receipts from producers, (2) receipts from other pool plants and (3) inventory of fluid milk products on hand at the be-

ginning of the month. It should also include all manufactured products which are reprocessed or repackaged in the plant during the month, except Class II and Class III products received from pool plants.

Adoption of the recommended definition would clarify and simplify the accounting procedure under the order. The new definition used in conjunction with the allocation provisions and the provisions for computing pool obligations of handlers would provide for the automatic reclassification of skim milk and butterfat in all Class IV products and in Class II and Class III products from nonpool plants which are reused in a higher-priced class during the present or a later accounting period. Employment of this definition would make it unnecessary for the market administrator to follow such products to determine the classes in which they are ultimately used. Segregation of Class IV products in handlers' plants by those coming from pool plants and those coming from nonpool plants would no longer be necessary. To avoid double accounting for producer milk which is used in a Class II or Class III product in a pool plant and which is reprocessed in the same plant or transferred to another pool plant, it is necessary to exclude such products from the other source milk definition. Such products should continue to be accounted for by the procedure currently followed.

With the adoption of the recommended definition of other source milk, all milk in a pool plant would be accounted for on the basis of one of the following five specific categories of milk:

- (1) Producer milk;
- (2) Fluid milk products received from other pool plants;
- (3) Products specified in Class II and Class III milk from pool plants which are used or reused in another product in the plant during the month;
- (4) Other source milk; and
- (5) Beginning and ending inventories of fluid milk products.

The allocation provisions should be re-drafted in terms of the five categories of milk and to eliminate separate allocation of other source milk received under an emergency permit. The Columbus market has been adequately supplied with producer milk for a number of years. The provision in the present order for allocating emergency other source milk on a pro rata basis is contrary to the accepted principle of allocating producer milk to the highest-priced classes. No distinction should be made between so-called emergency other source milk and any other source milk.

With the exception of the elimination of the provision for emergency other source milk, the recommended allocation procedure does not change the sequence of allocation from that followed in the present order. Handlers costs for producer milk would be essentially the same as under the present order. The recommended changes will provide equal treatment of other source milk (as redefined) regardless of source. Thus, other source milk in the form of a Class IV product from pool plants will be allocated in the

same manner as such products from outside sources. Any reclassification of such products will automatically result from the allocation procedure and will depend on the availability of an equivalent amount of producer milk in the pool plant in the current month. This will promote equality in the cost of milk among handlers regardless of the source of such products.

The provisions for computing the amount of skim milk and butterfat in each class and handler's obligations should be redrafted to incorporate conforming changes and standard order language.

Producers proposed that the duties of the market administrator be changed so that the monthly report of the utilization of producer milk, in each class by each handler be transmitted, upon request, directly to cooperative associations and to operators of pool plants, rather than through a public announcement. The proposal would also require reports and such changes in percentages as are revealed by the regular audit of the market administrator. Cooperatives and operators of pool plants are the parties most directly concerned and in a position to make marketing decisions on the basis of such data. It is reasonable that such parties have the audited data made available to them. The provision should be changed so that the market administrator will make such information available to the public by posting in his office.

Payments by nonpool plants. Under the present order, all distributing plants which dispose of a fluid milk product on routes in the marketing area are subject to full regulation. With the recommended requirements for pool plants, a plant could dispose of significant quantities of fluid milk in the marketing area and not be a pool plant. In fact, almost 50 percent of the Grade A receipts of a plant could, under certain circumstances, be disposed of as Class I products in the marketing area and the plant be a nonpool plant.

Milk is distributed in some parts of the marketing area, as recommended to be expanded, from plants at which reserve supplies are available at prices not higher than the Columbus Class IV price or at which the alternative disposition of the reserve supplies is to manufacturing outlets. At other plants, prices paid dairy farmers are equivalent to or more than the utilization value of their milk, if it were subject to full regulation.

Partially regulated nonpool plants should not have a competitive advantage in the sale of milk in the marketing area over fully regulated plants. It is appropriate, therefore, that the nonpool distributors of milk have the choice of paying into the producer-settlement fund either the difference between the Class I and Class IV price on their sales on routes within the marketing area or any amount by which such operator has failed to pay his Grade A dairy farmers the classification value of their milk at order prices.

Handlers operating nonpool fluid milk plants are required to file such reports as will enable the market administrator to verify their nonpool status. Under the

second option described in the preceding paragraph (that of making payment to dairy farmers), the operator of the nonpool plant would file a complete report of receipts and utilization. From such reports, subject to audit, the value of his milk would be computed at the class prices adjusted for location and butterfat content in the same manner as for a pool plant. From this utilization value, the market administrator would subtract cash payments to the Grade A dairy farmers who constitute the regular supply of milk at the nonpool plant. Only such payments would be recognized as had been made to such farmers by the 18th day following the end of the month. The payments would be the gross amount paid to such farmers for milk at the nonpool plant. The only deductions allowed would be those authorized in writing by the dairy farmer for supplies or services including hauling.

The nonpool plant may receive milk from other plants rather than directly from dairy farmers. If the other plant serves primarily as a receiving station for the nonpool distributing plant, all receipts and utilization of milk at both plants can be reported to determine whether or not the dairy farmers have been paid the equivalent of order prices at such nonpool plants. In such instances, the milk of such dairy farmers and any other source milk would be allocated in the same fashion as if the nonpool plant were a pool plant.

The operator of the nonpool distributing plant will be required to pay to the producer-settlement fund any amount by which the amount paid the dairy farmers, who constitute his regular source of supply, falls to equal the utilization value of the milk under the order. In this manner, the operator of the nonpool plant would be fully equated so far as the utilization cost of his milk is concerned with the pool plant operator.

The use of this option in this market will not preclude maintenance of orderly marketing conditions or provide an advantage to the operators of nonpool distributing plants over fully regulated handlers in the procurement of milk supplies. Nearly all of the milk received at such nonpool plants is procured outside of the procurement areas of the handlers to be fully regulated. The extent to which dairy farmers only incidentally associated with the market will share in the revenue derived from Class I sales in the marketing area will not significantly dissipate the returns to pool producers of milk for which minimum class prices are established under the order and who are relied upon to produce an adequate and dependable supply of approved milk for the marketing area. Consequently, the exercise of this option should not have a disruptive influence on the handling of milk in this area.

The option of paying the difference between the Class I and Class IV prices on the quantity sold as Class I in the marketing area should also be available to any handler operating a nonpool plant. Such payment will remove any competitive sales advantage in the marketing area as compared with fully regulated handlers and is necessary to re-

tain the integrity of the regulation in the event such plants do not exercise the other option.

The assessment of administrative expense should depend upon which option is chosen by the nonpool distributor. If he elects to pay the difference between the Class I and Class IV prices on his in-area sales he should be required to pay administrative expense only on such quantities. However, if he elects the payment based on the utilization value of his milk, he should pay administrative expense on his entire receipts from Grade A dairy farmers and other receipts in the form of a fluid milk product the same as fully regulated handlers. Obviously, the second option involves fully as much verification of the receipts and utilization at such a plant by the market administrator as at a pool plant. Such verification might well include the checking of weights and butterfat tests of receipts from dairy farmers and of the product sold, as well as, a complete audit of the books and records for such plants.

Administrative assessment. The provision for administrative assessment should be changed to conform with changes recommended in the accounting procedures and to provide for assessments on milk disposed of in the marketing area by partially regulated plants, as previously discussed. The present administrative assessment is two cents per hundredweight on all producer milk and other source milk at a fluid milk plant. The language should be changed to exclude from assessment other source milk received at a pool plant in forms other than fluid milk products. This would avoid placing the assessment on the milk equivalent of manufactured products and double assessment on milk used to produce such products if made from producer milk and reused in the pool plant. The proposed change to place administrative assessment on fluid milk products only, would provide an equitable basis for assessment among pool plants in this market. This same rate of administrative assessment should be made at partially regulated plants, as previously discussed. The present assessment not to exceed 2 cents per hundredweight is reasonable and will provide adequate funds for administering the order for the enlarged marketing area.

Provision should be made for excluding from regulation under the Columbus order any plant which is subject to the classification and pricing provisions of another Federal milk marketing order and from which a greater volume of fluid milk products is disposed of on routes in the marketing area and to plants subject to full regulation under such order than is disposed of in the Columbus marketing area on routes and to pool plants during the current and each of the three immediately preceding months. Such a provision would clarify under which order a plant which sells milk in more than one marketing area is to be regulated, and thereby avoid the possibility of dual regulation. Use of the four-month period as a criterion would reduce the possibility that plants which

supply nearly equal amounts of milk to the Columbus market and to other markets would be subject to different orders from month to month.

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

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

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

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

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

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

DEFINITIONS

§ 974.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 974.2 Department.

"Department" means the United States Department of Agriculture or such other Federal agency authorized to perform the price reporting functions specified in this part.

§ 974.3 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 974.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 974.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 974.6 Columbus, Ohio, marketing area.

"Columbus, Ohio, marketing area" hereinafter referred to as the "marketing area" means all territory including but not being limited to all municipal corporations and institutions owned or operated by the Federal, State or local Government, or portions thereof, in: Franklin County; Delaware County; Fairfield County, excluding the townships of Clear Creek and Amanda; Hartford, Monroe, Jersey, Lima, Etna, Bennington, Liberty, St. Albans, and Harrison townships in Licking County; Union, Oak Run, Fairfield, Jefferson, Canaan, and Darby townships in Madison County; and Jerome township in Union County; all in Ohio.

§ 974.7 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, concentrated milk, milk drinks (plain or flavored including prepared milk shake mixes and eggnog), cream (including sterilized cream), or any mixture in fluid form of milk, skim milk or cream (except storage cream, aerated cream products, ice cream mix, evaporated or condensed milk and sterilized products packaged in hermetically sealed containers).

§ 974.8 Route.

"Route" means a delivery (including a sale from a plant store) of a fluid milk product(s) to a wholesale or retail stop(s) other than to a milk or food processing plant(s).

§ 974.9 Fluid milk plant.

"Fluid milk plant" means a plant or other facilities which are used in the receipt, preparation, or processing of milk which is approved by a duly constituted health authority for fluid disposition as

Grade A milk and all or a portion of such milk is:

(a) Disposed of during the month in the form of a fluid milk product(s) in the marketing area on a route(s); or

(b) Moved to a plant described in paragraph (a) of this section in the form of a fluid milk product(s).

§ 974.10 Pool plant.

"Pool plant" means any fluid milk plant meeting the conditions of paragraph (a) or (b) of this section, except a plant operated by a producer-handler:

(a) Any fluid milk plant from which the volume of Class I milk disposed of on a route(s) and Class II milk is equal to not less than 50 percent of the Grade A milk described in § 974.12(a) received at such plant from dairy farmers and from other plants during the month and more than 15 percent of such receipts are disposed of as Class I milk on routes in the marketing area: *Provided*, That the 50 percent requirement of this paragraph shall apply only during the months of January, February, October and November to a fluid milk plant which operates routes all of which service only the Campus of Ohio State University, Columbus, Ohio; or

(b) Any fluid milk plant which receives milk from dairy farmers described in § 974.12(a) and from which fluid milk products equal to not less than 50 percent of the milk received at such plant from such dairy farmers during the month is moved to a plant(s) described in paragraph (a) of this section: *Provided*, That if such shipments are not less than 50 percent of the receipts of milk from such dairy farmers at such plant during the immediately preceding period of August through November, such plant shall, unless written application for nonpool plant status is received by the market administrator from the operator of such plant on or before March 1 of any year, be designated as a pool plant for the months of March through July of such year.

§ 974.11 Nonpool plant.

"Nonpool plant" means any milk manufacturing, processing, or bottling plant other than a pool plant.

§ 974.12 Producer.

"Producer" means any person, except a producer-handler, who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is:

(a) Permitted by the health authority having jurisdiction in the marketing area to be labeled and disposed of as Grade A milk in the marketing area; and

(b) Received during the month at a pool plant or diverted from a pool plant to another pool plant or to a nonpool plant pursuant to the conditions set forth in § 974.13.

§ 974.13 Producer milk.

"Producer milk" means skim milk and butterfat contained in milk: (a) Received at a pool plant directly from producers; (b) diverted for the account of the operator of a pool plant to another pool plant; or (c) diverted during the month to a nonpool plant for the account

of a cooperative association or the operator of a pool plant: *Provided*, That producer milk diverted shall be deemed to have been received at a pool plant at the same location as the pool plant from which it is diverted; *And provided further*, That this definition shall not include the milk of any person during any of the months of August through March in which the milk of such person is diverted to a nonpool plant for more than one-half of the days of delivery during the month.

§ 974.14 Handler.

"Handler" means (a) any person who operates a fluid milk plant, and (b) any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 974.13(c).

§ 974.15 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, who distributes any portion of such milk on a route in the marketing area and who receives no fluid milk products from other dairy farmers or nonpool plants: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 974.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts during the month in the form of fluid milk products, except: (1) Fluid milk products received from pool plants, (2) producer milk, and (3) inventories of fluid milk products on hand at the beginning of the month; and

(b) Products other than fluid milk products from any source, except Class II and Class III products from pool plants, which are repackaged, reprocessed or converted to another product in the plant during the month or skim milk and butterfat in such products for which other utilization or disposition is not established on the basis of the records required pursuant to § 974.32.

§ 974.17 Chicago butter price.

"Chicago butter price" means the arithmetical average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported for the month by the Department.

§ 974.18 Nonfat dry milk price.

"Nonfat dry milk price" means the arithmetical average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk for human consumption, f.o.b. Chicago area manufacturing plants, as published for the month by the Department.

MARKET ADMINISTRATOR

§ 974.20 Designation.

The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 974.21 Powers.

The market administrator shall have the power to: (a) Administer all of the terms and provisions of this part; (b) make rules and regulations to effectuate the terms and provisions of this part; and (c) receive, investigate, and report to the Secretary complaints of violations of this part.

§ 974.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties, and conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this part;

(c) Pay, out of the funds provided by § 974.76:

(1) The cost of his bond and of the bonds of those of his employees who handle funds entrusted to the market administrator,

(2) His own compensation, and

(3) All other expenses, except those incurred under § 974.77, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(d) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to his successor or to such other person as the Secretary may designate;

(e) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days, after the day upon which he is required to perform such acts, has not made:

(1) Reports pursuant to § 974.30, or

(2) Payments pursuant to §§ 974.71, 974.72, 974.75, 974.76, or 974.78;

(f) Submit his books and records to examination and furnish such information and verified reports as may be requested by the Secretary;

(g) On or before the 10th day after the end of each month, supply each cooperative association upon request, with a record of the amount and average butterfat test of milk received during such

month and the amount of any advance payments made and of any deductions or charges from payments for such milk authorized with respect to each producer determined by the market administrator to be a member of such association or to have given written authorization to such association to receive such information;

(h) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other person upon whose utilization the classification of milk for such handler depends;

(i) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 6th day of each month, the minimum Class I and Class II prices and butterfat differentials computed pursuant to §§ 974.51 (a) and (b) and 974.52(a);

(2) On or before the 6th day after the end of each month, the minimum Class III and Class IV prices and the butterfat differentials computed pursuant to §§ 974.51 (c) and (d) and 974.52 (b) and (c); and

(3) On or before the 10th day after the end of each month, the uniform price computed pursuant to § 974.61 and the butterfat differential computed pursuant to § 974.73;

(j) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information; and

(k) On or before the 10th day after the end of each month, upon request by a cooperative association described in § 974.77(b) or the operator of a pool plant, furnish such person and publicly announce by posting in a conspicuous place in his office, unless otherwise directed by the Secretary, the name of each handler who during the month received producer milk and the percentage of the skim milk and butterfat in such milk which was classified in each class during the month together with any significant changes in the reported percentages for any previous month as are revealed by the regular audit of the market administrator.

REPORTS, RECORDS, AND FACILITIES

§ 974.30 Reports of receipts and utilization.

On or before the 6th day after the end of each month, each handler shall report for such month to the market administrator for each of his pool plant(s), in the detail and on the forms prescribed by the market administrator, the following:

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk;

(2) Fluid milk products received from other pool plants;

(3) Products specified in Class II and Class III milk which are reprocessed or converted to another product in the plant during the month;

(4) Other source milk; and

(5) Beginning and ending inventories of fluid milk products;

CLASSIFICATION

§ 974.40 Basis of classification.

The skim milk and butterfat which are required to be reported pursuant to § 974.30(a) shall be classified by the market administrator, subject to the provisions of §§ 974.41 to 974.46.

§ 974.41 Classes of utilization.

Subject to the provisions set forth in §§ 974.43 and 974.44 the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk and butterfat (1) disposed of in the form of a fluid milk product, except as provided in paragraphs (b) (2) and (d) (2) of this section; (2) in ending inventory of fluid milk products; and (3) not specifically accounted for as Class II, Class III or Class IV milk;

(b) Class II milk shall be all skim milk and butterfat (1) used to produce cottage cheese, and any mixture containing skim milk or butterfat placed in containers or dispensers under pressure for the purpose of dispensing an aerated product (such as "Reddi-Wip", "Instant Whip", etc.), and (2) disposed of in bulk fluid form during any of the months of April through July, inclusive, to any manufacturer of soup, candy, or bakery products for use in such manufacturing operation;

(c) Class III milk shall be all skim milk and butterfat contained in frozen cream, and used to produce condensed milk and condensed skim milk (except evaporated milk or skim milk in hermetically sealed cans), ice cream, ice cream mix, ice cream novelties, ice sherberts, ice milk, imitation ice cream and frozen dairy desserts; and

(d) Class IV milk shall be all skim milk and butterfat (1) used to produce any product other than those specified in paragraphs (a), (b), or (c) of this section, (2) specifically accounted for as dumped or disposed of for livestock feed, (3) in actual plant shrinkage allocated to producer milk pursuant to § 974.42, but not in excess of two percent of such receipts of skim milk and butterfat, respectively, and (4) actual plant shrinkage allocated to other source milk pursuant to § 974.42.

§ 974.42 Shrinkage.

The market administrator shall allocate shrinkage at the handlers pool plant(s) as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively;

(b) To the producer milk at such plant, add the producer milk diverted to such plant and subtract producer milk diverted from such plant to another pool plant; and

(c) Prorate the amount computed pursuant to paragraph (a) of this section between receipts of skim milk and butterfat, respectively, in producer milk as computed pursuant to paragraph (b) of this section and in other source milk received in the form of a fluid milk product in bulk.

§ 974.43 Transfers.

Skim milk or butterfat transferred or diverted from a pool plant shall be classified as follows:

(a) As Class I milk if transferred or diverted in the form of a fluid milk product to another pool plant, unless:

(1) Utilization in another class is claimed by the operators of both plants in their reports submitted pursuant to § 974.30; and

(2) The transferee plant has utilization in the claimed classification of an equivalent amount of skim milk and butterfat, respectively, after making the assignment pursuant to § 974.36(a) (1), (2) and (3) and the corresponding steps of § 974.46(b): *Provided*, That if either or both plants have other source milk, the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the highest-valued use classification available at both plants to producer milk;

(b) As Class I milk, if transferred or diverted to a producer-handler in the form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located 100 airline miles or more from the State Capitol in Columbus, Ohio; and

(d) As Class I milk if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant, except a plant operated by a producer-handler, located less than 100 airline miles from the State Capitol in Columbus, Ohio, unless:

(1) The handler claims classification in another class in his report submitted pursuant to § 974.30 and the operator of the nonpool plant maintains books and records showing the receipt and utilization of all skim milk and butterfat at such plant which are made available, if requested by the market administrator for verification: *Provided*, That if the classification claimed by the handler results in an amount of skim milk and butterfat claimed by all handlers transferring or diverting milk from pool plants to such nonpool plant in Class I milk, Class II milk, or Class III milk, respectively, of less than the assignable amounts remaining after the following computation, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk, Class II milk, or Class III milk, respectively, in series beginning with Class I milk, pro rata, in accordance with the total of the lower-priced classifications reported by each of such handlers:

(i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk and used to produce products in Class II milk and Class III milk, pursuant to the classification provisions of this order applied to such nonpool plant, subtract, in series beginning with Class I milk, the skim milk and butterfat received at such plant directly from dairy farmers who are approved by a duly constituted health authority to supply "Grade A" milk and who the market administrator determines constitutes the regular source of supply for such nonpool plant;

(ii) From the remaining amount of Class I milk, subtract the skim milk and butterfat, respectively, in fluid milk prod-

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe; and

(d) His producer payroll which shall show for each producer and association of producers:

(1) The total pounds of producer milk received and the average butterfat test thereof;

(2) The amount and date of any advance payments; and

(3) The amount or rate per hundred-weight of milk and nature of each deduction or charge made by the handler.

§ 974.31 Other reports.

(a) Each handler and producer-handler shall make reports to the market administrator with respect to receipts and utilization at each of his fluid milk plants which is not a pool plant at such time and in such manner as the market administrator may request.

(b) The operator of a pool plant shall notify the cooperative association of his intention to divert milk of its member-producers pursuant to § 974.13(c) not less than 24 hours prior to such diversion.

§ 974.32 Records and facilities.

Each handler and producer-handler shall maintain and make available to the market administrator, his agent, or such other person as the Secretary may designate, during the usual hours of business, such accounts and records of his operations and such facilities as, in the opinion of the market administrator, are necessary to verify reports or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat handled, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat and for other contents, of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 974.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

ucts received from other markets and which is classified and priced as Class I milk pursuant to another order issued pursuant to the Act: *Provided*, That the amount subtracted pursuant to this subdivision shall be limited to such market's pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the Act; and

(iii) From the remaining amount of Class II milk and Class III milk, subtract, in series beginning with Class II milk, the skim milk and butterfat, respectively, in milk received directly from dairy farmers, at such nonpool plant, who are not approved by a duly constituted health authority to supply "Grade A" milk.

§ 974.44 Responsibility of handlers.

In establishing the classification of skim milk and butterfat as required in §§ 974.41 and 974.43, the burden rests upon the handler who first receives such skim milk or butterfat to prove to the market administrator that such skim milk or butterfat should not be classified as Class I milk.

§ 974.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of skim milk and butterfat in Class I milk, Class II milk, Class III milk and Class IV milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk used to produce and disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water normally associated with such solids in the form of whole milk.

§ 974.46 Allocation of skim milk and butterfat classified.

After making the computation pursuant to § 974.45, the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler during the month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class IV milk the pounds of skim milk in producer milk shrinkage assigned to Class IV milk pursuant to § 974.41(d) (3);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with the lowest-priced use available, the pounds of skim milk in other source milk;

(3) Subtract from the remaining pounds of skim milk in Class II and Class III milk, respectively, the pounds of skim milk in products specified in Class II and Class III milk, respectively, which have been produced in a pool plant and which are reprocessed or converted to another

product in the plant during the month: *Provided*, That if the amount to be subtracted pursuant to this subparagraph is in excess of the amount remaining in such class, such excess shall be subtracted from the next higher-priced available class;

(4) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from other pool plants according to the classification determined pursuant to §§ 974.41 and 974.43;

(5) Subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the pounds of skim milk remaining in Class IV milk the skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) Subtract, in series beginning with the lowest-priced use available, the amount, if any, by which the total skim milk remaining in all classes exceeds the pounds of skim milk in producer milk.

(b) Butterfat shall be allocated by the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class.

MINIMUM PRICES

§ 974.50 Basic formula price.

The basic formula price per hundredweight of milk for the month shall be the higher of the prices as computed to the nearest one tenth of a cent by the market administrator for such month pursuant to paragraphs (a) and (b) of this section:

(a) The arithmetical average of the basic (or field) prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following places for which prices are reported to the market administrator or to the Department by the companies listed below:

Company and Location

- Borden Co., Mount Pleasant, Mich.
- Borden Co., New London, Wis.
- Borden Co., Orfordville, Wis.
- Carnation Co., Oconomowoc, Wis.
- Carnation Co., Richland Center, Wis.
- Carnation Co., Sparta, Mich.
- Pet Milk Co., Belleville, Wis.
- Pet Milk Co., Coopersville, Mich.
- Pet Milk Co., New Glarus, Wis.
- Pet Milk Co., Wayland, Mich.
- White House Milk Co., Manitowoc, Wis.
- White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the Chicago butter price, subtract 3.5 cents, and multiply the difference by 4.2; and

(2) From the nonfat dry milk price, subtract 4 cents and multiply the difference by 8.2.

§ 974.51 Class prices.

Subject to the provisions of §§ 974.52, 974.53 and 974.55 the minimum class prices for producer milk per hundred-

weight for the month shall be determined by the market administrator as follows:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding month, plus \$1.10 and plus or minus a "supply-demand adjustment" computed as follows:

(1) Compute a "current utilization percentage" by dividing the total receipts of producer milk during the second and third preceding months by the total gross pounds of Class I milk and Class II milk pursuant to § 974.41(b) (2) (less ending inventory and adjusted to eliminate duplications due to interhandler transfers) for the same months, multiplying the result by 100, and rounding to the nearest integer.

(2) Compute a "net utilization percentage" by subtracting (algebraically) from the current utilization percentage the following appropriate "standard utilization percentage".

Month for which a price is being computed:	Standard utilization percentage
January	127
February	129
March	126
April	124
May	125
June	130
July	141
August	160
September	156
October	137
November	128
December	130

(3) Determine the amount of the supply-demand adjustment from the following table:

Net utilization percentage:	Supply-demand adjustment (cents per hundredweight)
+16 or over	-38
+12 or +13	-28
+8 or +9	-20
+4 or +5	-10
+1 or -1	0
-4 or -5	+10
-8 or -9	+20
-12 or -13	+28
-16 or under	+38

Provided, That when the net utilization percentage is between two tabulated brackets, the supply-demand adjustment shall be determined by the tabulated bracket which is adjacent to the net utilization percentage and is the same as or the nearer to the bracket used in the immediately preceding month.

(b) *Class II milk.* The price for Class II milk shall be the basic formula price for the preceding month plus \$0.70 and plus or minus the supply-demand adjustment computed pursuant to paragraph (a) of this section.

(c) *Class III milk.* The price for Class III milk shall be the basic formula price, adjusted during the months of August through March, by 26 percent of any plus supply-demand adjustment computed pursuant to paragraph (a) of this section rounded to the nearest one-tenth cent and plus the following amount for the specified month:

Month	Amount (dollars)
August through March	0.55
April through July	.50

(d) *Class IV milk.* The price for Class IV milk shall be the sum of the values computed pursuant to § 974.50(b) (1) and (2) minus 12 cents for the months of April through July and minus 5 cents for the months of August through March.

§ 974.52 Butterfat differentials to handlers.

For each one-tenth of one percent that the weighted average butterfat test of producer milk which is classified in each class for each handler is more or less than 3.5 percent there shall be added to or subtracted from, as the case may be, the price for such class a butterfat differential calculated by the market administrator as follows:

(a) *Class I and Class II milk.* Multiply the Class I price for the month by 0.0172 and round to the nearest one-tenth cent: *Provided*, That the Class I and Class II butterfat differential shall not be less than the differential computed pursuant to paragraph (b) of this section for the current month.

(b) *Class III milk.* Multiply the Chicago butter price by the following factor for the specified month and round to the nearest one-tenth cent:

Month	Factor
August through March	0.126
April through July	0.124

(c) *Class IV milk.* Multiply the Chicago butter price by 0.115.

§ 974.53 Location differentials to handlers.

For that producer milk which is received at a pool plant located 80 miles or more from the State capitol in Columbus, Ohio, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to another pool plant in the form of a fluid milk product and assigned to Class I or Class II milk pursuant to the proviso of this section, or otherwise classified as Class I milk or Class II milk, the prices specified in § 974.51 (a) and (b) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Ohio State capitol (miles) :	Rate per hundredweight (cents)
80 but less than 90	15.0
For each additional 10 miles or fraction thereof an additional	1.5

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class IV, and Class III milk in the transferee plant after making the calculations prescribed in § 974.46 (a) (3), and the comparable steps in § 974.46(b) for such plant, such assignment to transferrer-plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 974.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market

administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 974.55 Prices of Class I and Class II milk disposed of in other Federal order markets.

The price of Class I milk and Class II milk disposed of from a pool plant in the marketing area of another Federal milk marketing order or agreement, issued pursuant to the Act, shall be the price applicable at such plant under the Columbus order, or the price applicable at such plant for milk or similar use or disposition pursuant to such other order, whichever is higher.

§ 974.56 Computation of prices of skim milk and butterfat.

The prices per hundredweight of skim milk and butterfat to be paid by each handler for milk in each class shall be computed as follows: For each class, respectively, the price per hundredweight of skim milk shall be the applicable class price for the month (§ 974.51 (a), (b), (c) and (d) or § 974.55) less the result of multiplying the applicable class price butterfat differential for the month (§ 974.52 (a), (b), and (c)) by 35. For each class, respectively, the price per hundredweight of butterfat shall be the applicable class price for the month plus the result of multiplying the applicable class butterfat differential for the month by 965.

DETERMINATION OF UNIFORM PRICE

§ 974.60 Net obligation of each handler.

The net obligation of each handler for producer milk received during the month shall be a sum of money computed as follows:

(a) Multiply the pounds of skim milk and butterfat, respectively, in producer milk in each class by the applicable class prices pursuant to § 974.56 and add together the resulting amounts;

(b) Add the amount(s) computed by multiplying the pounds deducted from each class for such handler pursuant to § 974.46(a)(7) and the corresponding step of § 974.46(b) by the applicable class prices;

(c) Subtract an amount computed as follows: Multiply the difference between the Class III and the Class IV price for skim milk by the skim milk in producer milk in excess of the skim milk classified as Class I, Class II and Class III milk (other than that used to produce condensed skim milk) in any of the months of April, May, June and July which is disposed of in such month from the pool plant of such handler in the form of condensed skim milk to a plant whose supply of skim milk and butterfat is not required to be approved as Grade A milk by a duly constituted health authority;

(d) Add an amount computed as follows: Multiply the amount of skim milk and butterfat, respectively, subtracted pursuant to the proviso in § 974.46(a) (3) by the difference between the current month's prices for the class in which such skim milk and butterfat was originally classified and the prices of the class from which it is subtracted during the month; and

(e) Add or subtract, as the case may be, any amount due the producer-settlement fund or the handler as a result of errors discovered by the market administrator in the verification of reports or payments of such handler for any previous month.

§ 974.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 974.60 for all handlers except those who did not make payments pursuant to § 974.71 for the previous month;

(b) Subtract for each of the months of April, May, June and July an amount computed by multiplying the hundredweight of milk received from producers during the month by 35 cents;

(c) Add for each to the months of September, October, and November, 20, 30 and 30 percent, respectively, and for December the balance of the total amount subtracted during the immediately preceding April-July period pursuant to paragraph (b) of this section;

(d) Add the sum of the values of the location differentials allowable pursuant to § 974.74;

(e) Subtract, if the weighted average butterfat test of all producer milk represented in the sum computed pursuant to paragraph (a) of this section is greater than 3.5 percent; or add, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed as follows: Multiply the hundredweight of such milk by such difference and multiply the result by the butterfat differential computed pursuant to § 974.73 times 10;

(f) Add not less than one-half of the unobligated balance in the producer-settlement fund;

(g) Divide by the hundredweight of producer milk; and

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

§ 974.62 Notification of handlers.

The market administrator shall:

(a) On or before the 10th day after the end of each month, notify each handler who operates a pool plant:

(1) The amount and value of his milk in each class pursuant to § 974.60;

(2) The totals of such amounts and values due the producer-settlement fund pursuant to § 974.71; and

(3) The amount to be paid by such handler pursuant to § 974.76.

(b) On or before the 20th day after the end of each month, notify each handler who operates a fluid milk plant, not a pool plant:

(1) The amount due the producer-settlement fund pursuant to § 974.63; and

(2) The administrative assessment to be paid by such handler pursuant to § 974.63.

§ 974.63 Obligation of handlers operating a fluid milk plant which is a non-pool plant.

On or before the 25th day after the end of each month, each handler operating

a fluid milk plant which is a nonpool plant shall pay to the market administrator the amounts computed pursuant to paragraph (a) of this section, unless the handler elects at the time of reporting pursuant to § 974.30 to pay the amounts computed pursuant to paragraph (b) of this section.

(a) An amount (1) for deposit in the producer-settlement fund, equal to the value of all skim milk and butterfat disposed of from such plant as Class I milk (computed in accordance with § 974.45) on routes in the marketing area during the month at the Class I prices applicable at the location of such plant, less the value of such skim milk and butterfat at the Class IV prices and (2) for administrative assessment, the rate specified in § 974.76 with respect to the Class I milk disposed of from such plant in the marketing area during the month; and

(b) An amount (1) for deposit in the producer-settlement fund, equal to any plus amount remaining after deducting from the value that would have been computed pursuant to § 974.60 for such nonpool plant if it were a pool plant: (i) The gross payment made by such handler on or before the 18th day after the end of the month for milk received during the month from dairy farmers described in § 974.12(a) at such plant or at a plant which serves as a supply plant for such plant and (ii) any payments made in accordance with provisions similar to those contained in paragraphs (a)(1) of this section and subparagraph (1) of this paragraph applicable to such plant as a partially regulated plant under another order issued pursuant to the Act and (2) for administrative assessment, an amount equal to that which would have been computed pursuant to § 974.76 if such plant were a pool plant during the month, except that if such plant is also a partially regulated plant under another order issued pursuant to the Act and the Class I sales in such other marketing area exceeded those made in the Columbus marketing area during the month, the payments due under this subparagraph shall be reduced by the amount of any payments for administrative assessment under such other order.

§ 974.64 Plants subject to other Federal orders.

The provisions of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 974.10 and a greater volume of fluid milk products is disposed of from such plant to pool plants and to retail or wholesale outlets located in the Columbus, Ohio, marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding; *Provided*, That the operator of a plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at

the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

PAYMENTS

§ 974.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 974.63 and 974.71 shall be deposited in this fund, and all payments made pursuant to § 974.72 (a) and (b) shall be made out of this fund; and

(b) All amounts subtracted pursuant to § 974.61(b) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 974.72 in accordance with the requirements of § 974.61(c).

§ 974.71 Payments to producer-settlement fund.

On or before the 12th day after the end of each month, each handler shall pay to the market administrator his obligation for milk for such month of which he is notified pursuant to § 974.62(a), less (a) the amount of deductions authorized pursuant to § 974.72(a)(4) and itemized on the handler's producer payroll: *Provided*, That such deductions for each individual producer shall not exceed the total value of the milk received from such producer during the month, and (b) an amount not to exceed the value of milk received from producers to whom the request to make payment pursuant to § 974.72(c) applies computed at the rate of the uniform price adjusted by the butterfat and location differentials pursuant to § 974.73 and § 974.74.

§ 974.72 Payments to producers.

(a) Except as provided in paragraph (c) of this section, on or before the 16th day after the end of each month, the market administrator shall make payment to each producer for milk received from him during the month by each handler from whom the appropriate payments have been received pursuant to § 974.71(a) at the uniform price computed pursuant to § 974.61 subject to the following adjustments:

(1) The butterfat differential pursuant to § 947.73;

(2) The location differential pursuant to § 974.74;

(3) Less marketing service deductions pursuant to § 974.77(a);

(4) Less proper deductions authorized in writing by the producer: *Provided*, That for producers who are members of a cooperative association which receives payment for milk pursuant to paragraph (b) of this section, such authorization for hauling and assignments shall be by the cooperative association; and

(5) Adjusted for any error in making payment to such producer for past months: *Provided*, That if the balance in the producer-settlement fund not otherwise obligated is insufficient to make all payments pursuant to this

section, the market administrator shall reduce such payments pro rata and shall complete such payments on or before the next date for making payments pursuant to this section following that on which such balance of payment is received;

(b) In making payments to producers pursuant to paragraph (a) of this section, the market administrator shall pay on or before the 14th day after the end of the month to:

(1) A cooperative association qualified under § 974.77(b) which is authorized to collect payment for milk of its members and from which a written request for such payment has been received, the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such association to receive such payments, and

(2) Each handler an amount, if any, by which payments to producers for milk required pursuant to paragraph (c) of this section, before deductions for marketing services, exceeds the amount deducted pursuant to § 974.71 (a) and (b) with respect to such milk.

(c) On or before the 16th day after the end of each month, each handler shall pay each producer, who is not a member of a cooperative association qualified pursuant to § 974.77(b) and for whom a written request to make payments has been filed by the handler with the market administrator, for milk received from him during the month at not less than the uniform price as adjusted pursuant to paragraph (a) (1), (2), (3), and (4) of this paragraph; and

(d) In making the payments to producers pursuant to paragraphs (a), (b), and (c) of this section, the payer shall furnish each producer or cooperative association, as the case may be, with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The amount or the rate per hundredweight of milk and nature of each deduction claimed by the handler; and

(5) The net amount of payment to such producer.

§ 974.73 Butterfat differential to producers.

In making payment for producer milk pursuant to § 974.72, there shall be added to or subtracted from, respectively, the uniform price per hundredweight for each one-tenth of one percent of butterfat content in such milk above or below 3.5 percent a butterfat differential computed by the market administrator as follows:

(a) Compute the percentage that the butterfat in producer milk remaining in each class pursuant to § 974.46 is of the total butterfat in producer milk so assigned to such classes;

(b) Multiply each such percentage by the butterfat differential for the respective class pursuant to § 974.52; and

(c) Add into one total the values obtained in paragraph (b) of this section and round off such total to the nearest one-tenth cent.

§ 974.74 Location differential to producers.

In making payment for producer milk pursuant to § 974.72, the uniform price for all producer milk received at a pool plant located 80 miles or more by the shortest hard-surfaced highway distance from the Ohio State Capitol in Columbus, as determined by the market administrator, shall be reduced by the appropriate zone differential provided in § 974.53.

§ 974.75 Adjustment of errors.

Whenever audit by the market administrator of the payment required to be made by a handler pursuant to § 974.63, § 974.71 or § 974.72, discloses payment of less than is required, the handler shall make up such payment not later than the time for making such payments next following such disclosure.

§ 974.76 Expense of administration.

As his pro rata share of expense incurred in the maintenance and function of the office of the market administrator and in the performance of his duties, each handler shall pay to the market administrator on or before the 12th day after the end of the month, two cents per hundredweight, or such lesser amount as the Secretary from time to time may prescribe, with respect to all receipts at his pool plant during the month of producer milk and other source milk received in the form of a fluid milk product. A handler operating a fluid milk plant which is a nonpool plant shall make administrative assessment payments in accordance with § 974.63.

§ 974.77 Marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator or handler, as the case may be, shall deduct 5 cents per hundredweight or such amount not to exceed 5 cents as the Secretary may from time to time prescribe, from the payments made to each producer pursuant to § 974.72 (a) or (c). Such deductions made by the handler shall be paid to the market administrator on or before the 12th day after the end of the month. Such moneys shall be used by the market administrator to check weights, samples, and tests of producer milk received by handlers and to provide producers with market information, such service to be performed by the market administrator or by an agent engaged by and responsible to him;

(b) In the case of producers for whom a cooperative association which, as determined by the Secretary, has its entire activities under the control of its members and is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be au-

thorized by the membership agreement or marketing contract between such cooperative association and such producers and, on or before the 14th day after the end of each delivery period, pay over such deductions to the cooperative association rendering such services.

§ 974.78 Overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 974.63, 974.71, 974.72, 974.75, 974.76, or 974.77 shall be increased one-half of one percent each month or fraction thereof, compounded monthly, until such obligation is paid.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 974.80 Effective time.

The provisions of this part or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 974.81.

§ 974.81 Suspension or termination.

The Secretary may suspend or terminate this part or any provision of this part whenever he finds that this part or any provision of this part obstructs, or does not tend to effectuate the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

§ 974.82 Continuing power and duty of the market administrator.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(a) The market administrator, or such other person as the Secretary may designate, shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements, and when so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, or such person to such person as the Secretary may direct; and

(3) If so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this part.

(b) Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate shall, if so directed by the Secretary, liquidate the business of the market administra-

tor's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 974.90 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 974.91 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision and of the remaining provisions of this part to other persons or circumstances, shall not be affected thereby.

§ 974.92 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c(15) (A) of the Act or before a Court.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the

said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of

the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set off by the mar-

ket administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

Issued at Washington, D.C., this 20th day of January 1959.

[SEAL]

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 59-634; Filed, Jan. 22, 1959;
8:48 a.m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Bureau Order 569]

MEMBERS OF AGUA CALIENTE (PALM SPRINGS) BAND OF MISSION INDIANS

Instructions for Allotting Additional Lands

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by 25 U.S.C. 9, it is proposed to adopt the Instructions set forth below.

The proposed Instructions relate to matters which are exempt from the rule making requirements of the Administrative Procedure Act (5 U.S.C. 1003); however, it is the policy of the Department of the Interior that, wherever practicable, the rule making requirements be observed voluntarily. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed Instructions to the Bureau of Indian Affairs, Washington 25, D.C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

ROGER ERNST,

Assistant Secretary of the Interior.

JANUARY 19, 1959.

It is the purpose of this instruction to furnish a general guide to procedure in allotting additional tribal land to members of the Agua Caliente (Palm Springs) Band of Mission Indians to achieve the fullest possible measure of equalization of values of allotments, in accordance with previously stated Departmental objectives. Statutory authority and direction for allotments is found in the Act of January 12, 1891 (26 Stat. 712), as amended by the Act of March 2, 1917 (39 Stat. 969, 976). This instruction supersedes prior instructions regarding equalization of allotments.

Equalization will be accomplished to the highest value level possible, utilizing all available allottable tribal lands to the extent permitted by acreage limitations, on the basis of present day values of allotments, excluding the value of any improvements thereon, where the allot-

tee is still living and he still owns his allotment in trust or in fee. Where lands have been sold under supervision of this Bureau by an allottee who is still living, the value used as a basis for equalization will be the amount received in such sale, excluding the value assigned to any improvements thereon. Where lands have been fee patented and sold by an allottee who is still living, the value used as the basis for equalization will be the appraised value of the land, excluding improvements, at the time it was sold, regardless of the amount received in the sale.

As in the case of the allotted lands, the value of the tribal lands will be determined on the basis of appraisals recently made for equalization purposes by independent contract appraisers. Tribal lands are not available in sufficient quantity and value to equalize to the highest valued allotment. A number of the higher valued allotments will, of necessity, be excluded from participation in equalization. The Area Director will calculate the highest possible level of equalization, giving due consideration to the acreage limitations imposed by law, and determine the number of allottees who may participate. Deceased allottees will be excluded under the well established legal principle that the right to allotment does not survive the death of the individual.

The term "available allottable tribal land" includes all tribal land except minimum areas required for cemetery and church purposes.

The Area Director will identify the specific tracts of land to be reserved for church and cemetery purposes and inform the Commissioner as to the descriptions of such tracts for preparation of an order revoking the previous reserve orders and reserving the church and cemetery sites.

In order to afford tribal members the opportunity of maintaining the reserved lands in their present status, a member may tentatively select areas now in reserve status, representing all or any part of his equalization share, with the view of relinquishing this selection to the tribe for tribal reserve purposes (not available for selection by others) when all selections have been made, and forfeiting his right to that amount of his equalization share.

Applications received after June 20, 1958, the date of approval of the original instructions, for new allotments from or on behalf of any members of the Band who have not heretofore received allotments will be rejected. After equalization is completed applicants for new allotments may select any unallotted land except the area reserved for cemetery and church purposes. Further, in view of maintaining a necessary stability of tribal land values pending completion of equalization, applications for exchanges of land between individuals and the Band will be rejected.

The prior allotting instructions included a purported classification of lands on the basis of homesite and agricultural potential. However, in the light of the Department's recognition that this equalization program is based on value rather than on acreage, it is permissible to allot lands to any individual up to the maximum of 160 acres allowed by law.

PROCEDURES

1. Prepare maps of the available allottable tribal lands, showing thereon a division of such lands into parcels or units of the maximum size consistent with the prospective requirements of the allottees participating in equalization, giving all possible regard to maintaining such plot-tage factors as will preserve to the highest degree the values inherent in the lands thus being subdivided, and giving due consideration to acreage limitations imposed by law. All parcels shall conform as nearly as possible to aliquot parts of regular legal subdivisions of the public land surveys. The map will show unit values of each designated parcel, one unit for each \$5,000 of value and a half unit being the smallest denomination of value. It will be impracticable to make parcels of land available for selection which will exactly equal in value the amount to which the allottees may be entitled. Rounding values off to the nearest \$2,500 will be an acceptable practice. In order to aid allottees in deciding upon selections, the Area Director will mark on the ground to the extent he deems practical the parcels shown on the maps. Should it be necessary, the Area Director shall arrange with the Bureau of Land Management for the approval of plats to cover selections which do not conform to aliquot parts of legal subdivisions.

2. The Area Director shall prepare a list of allottees entitled to participate in equalization. No. 1 on this list shall be the allottee having the lowest valued allotment. No. 2 shall be the allottee having next to the lowest valued allotment, and so forth, in ascending order of values. The Area Director shall arrange the allottees in Equalization Groups, taking into consideration the relative amounts of additional value to which the allottees are entitled and the values of the parcels of land available for allotment.

3. Participating allottees (or the appropriate representatives of minor allottees) shall be informed in writing by registered mail of the number of units of value to which they are entitled and the Equalization Group to which they belong. The notice shall fix a certain date and hour, not less than 10 days thereafter, for drawings to determine the order of preference for making allotment selections within their respective Equalization Groups. Drawings for all Equalization Groups may be held on the same date.

4. The said drawings shall be conducted at the Palm Springs Office under the supervision of the Area Director or his authorized representative. If persons eligible to draw for themselves or for another shall fail to appear at the time of the drawing, the Area Director or his authorized representative shall make the drawing for such person or persons. Drawing to determine priority of selection and any other action, including selection of land, which may be necessary on behalf of a minor, shall be accomplished for the minor by his or her legal guardian, or if there be none, by the parent or other person having custody of the minor. Legal guardians will be required to exhibit letters of guardianship and to establish their identities to the satisfaction of the officer conducting the drawing or other proceeding.

5. The individuals in each group shall make their selections in the order of preference established by the drawings, and selections by or on behalf of the members of Equalization Group No. 1 shall have been completed before the members of the second and succeeding Equalization Groups make their selections. Each allottee shall be notified by registered mail at least 10 days in advance of the time set for his required appearance at the Bureau of Indian Affairs Office in Palm Springs. Not more than one day shall be allowed for each allottee to make his equalization selection. The person entitled to make the first selection by reason of being in Equalization Group No. 1 and having drawn No. 1 in the drawing held for that group shall make a selection of a tract with the highest possible unit value which will not exceed the number of units to which he is entitled. If, after making his selection, he is entitled to additional value, he shall select another parcel, again being limited to a tract of the highest unit value which will not exceed the number of units to which he is entitled and which will not result in

his exceeding the acreage limitations imposed by law; continuing in this manner until his equalization selections have been completed. Other persons entitled to make selections shall in their turn and at the time designated for them proceed to select in like manner until their equalization selections have been completed. If, for any valid reason, an individual is unable to appear at the time set, a selection may be made for him by a representative legally authorized by appropriate power of attorney to act for him.

6. If an individual does not appear, either in person or by authorized representative, at the time set for his selection, or having appeared at such time, either in person or by authorized representative, is unable or unwilling to decide upon his selection within the one day allowed, the Area Director or his authorized representative shall make a selection for him.

7. The periods of time allowed for the making of selections are maximum periods. The Area Director, or his representative, and the allottees concerned may by mutual consent proceed in the established order with the selection of lands without awaiting the time set for the selection.

8. When an individual has decided upon a selection, he shall make application for an allotment thereof on forms to be supplied by the Area Director.

9. When selections and applications therefor have been made by or on behalf of all persons entitled thereto, the Area Director shall prepare a schedule of allotments which, with his certification and recommendations with regard thereto, shall be submitted, through the Commissioner, to the Secretary for approval.

[F.R. Doc. 59-617; Filed, Jan. 22, 1959; 8:46 a.m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ. 570, Rev. Apr. 20, 1943, 1959, Supp. 193]

FIREMAN'S FUND INDEMNITY CO.

Termination of Authority to Qualify as Surety on Federal Bonds

JANUARY 19, 1959.

Notice is hereby given that the Certificate of Authority issued by the Secretary of the Treasury to Fireman's Fund Indemnity Company, San Francisco, California, under the provisions of the Act of Congress approved July 30, 1947 (6 U.S.C. 6-13) to qualify as sole surety on recognizances, stipulations, bonds and undertakings permitted or required by the laws of the United States has been terminated effective as of December 31, 1958.

Fireman's Fund Insurance Company, a California corporation, holds a certificate of authority from the Secretary of the Treasury as an acceptable surety on bonds in favor of the United States, and under a merger effected on December 31,

1958, by the filing on that date with the Secretary of State of the State of California, of a certificate of ownership in accordance with the provisions of section 4124 of the California Corporations Code, merged into itself Fireman's Fund Indemnity Company and acquired all of the assets and assumed all of the liabilities of Fireman's Fund Indemnity Company. Further details as to this merger may be obtained from the Treasury Department, Bureau of Accounts, Surety Bonds Branch, Washington 25, D.C.

The merger of the two companies will not affect the underwriting limitation for the surviving corporation, Fireman's Fund Insurance Company, which will remain at \$12,403,000.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F.R. Doc. 59-623; Filed, Jan. 22, 1959; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-82]

AMERICAN PRESIDENT LINES, LTD.

Notice of Application and of Hearing

Notice is hereby given of the application of American President Lines, Ltd., for written permission of the Maritime Administrator, under section 805(a) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1223, to permit the carriage of ten passengers to be booked by Military Sea Transportation Service from California to Hawaii on Voyage 17 of the "SS President Hoover," sailing from San Francisco in its Trans-Pacific Trade Route No. 29, Line A-1 Service, on or about February 5, 1959. This application may be inspected by interested parties in the Office of Government Aid, Maritime Administration.

A hearing on the application has been set before the Maritime Administrator for January 27, 1959, at 9:30 a.m., e.s.t., in Room 4519, General Accounting Office Building, 441 G Street NW., Washington 25, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on January 26, 1959, notify the Secretary, Maritime Administration, in writing, in triplicate, and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Maritime Administration, petitions for leave to intervene received after the close of business on January 26, 1959, will not be granted in this proceeding.

Dated: January 21, 1959.

[SEAL] JAMES L. PIMPER,
Secretary.

[F.R. Doc. 59-669; Filed, Jan. 22, 1959; 10:21 a.m.]

BUREAU OF THE BUDGET

ORDER TRANSFERRING TO TENNESSEE VALLEY AUTHORITY USE, POSSESSION AND CONTROL OF CERTAIN LANDS IN TENNESSEE

By virtue of the authority vested in the President of the United States by section 7(b) of the Tennessee Valley Authority Act of 1933, 48 Stat. 63, and delegated to the Director of the Bureau of the Budget by section 1(i) of Executive Order No. 10530 of May 10, 1954, it is ordered that the use, possession, and control of the following described lands be, and they are hereby, transferred from the Atomic Energy Commission to the Tennessee Valley Authority, subject, however, to the provisions hereinafter set forth. Said transfer is necessary and proper for the purpose of the Tennessee Valley Authority as stated in said Tennessee Valley Authority Act of 1933, as amended:

Land lying in the First Civil District of Anderson County, State of Tennessee, on the right bank of the Clinch River, and extending from the L. & N. Railroad bridge across the river at Oak Ridge southeasterly approximately 3 miles to the Edgemoor Bridge, the said land being comprised of three parcels and being more particularly described as follows:

PARCEL No. 1

Beginning at a point (Coordinates: N. 594,914; E. 2,543,533) on the right bank of the Clinch River and in the center line of the Edgemoor Bridge; thence with the center line of an existing road as it meanders in a southwesterly direction approximately 490 feet to a point; thence, leaving the road, N. 21°05' W., 202 feet, passing a metal marker (Coordinates: N. 594,715; E. 2,543,086) at 30 feet, to a metal marker; thence N. 29°58' W., 210 feet to a metal marker; thence S. 83°04' W., 195 feet to a metal marker; thence S. 8°05' E., 189 feet to a metal marker; thence S. 36°45' E., 242 feet to a metal marker in the northwest line of the right of way for a road; thence with the road right of way line, a line 30 feet northwest of and parallel to the center line of the road, as it meanders in a southwesterly direction approximately 765 feet to a metal marker (Coordinates: N. 594,216; E. 2,542,262); thence, leaving the road right of way line, N. 24°53' W., 302 feet to a metal marker; thence S. 75°29' W., 274 feet to a metal marker; thence S. 6°20' E., 345 feet to a metal marker in the north line of the right of way for the above mentioned road; thence with the road right of way line, a line 30 feet north of and parallel to the center line of the road, as it meanders in a westerly direction approximately 3660 feet to a point (Coordinates: N. 592,674; E. 2,538,636); thence, leaving the road right of way line, N. 51°42' W., 63 feet to a point in the southeast line of the right of way for a road relocation, said point being 60 feet southeast of and opposite survey station 5+50 on the surveyed center line of the relocation; thence with the southeast line of the right of way for the road relocation (a detailed description of which is recited hereinafter) in a northeasterly direction to a point opposite which there is an equation in stationing on the center line survey, survey station 61+22.2 on the line back being equal to survey station 0+00 on the line ahead; thence continuing with the line of the right of way for the road relocation, a line 80 feet southeast of and parallel to the center line of the road relocation; N. 51°53' E., 22 feet to a point; thence, leaving the road right

of way line, N. 38°07' W., 150 feet to a point; thence N. 69°58' W., 106 feet to a point in the east line of the right of way for the ramp road leading to the Elza Gate Road opposite survey station 0+00 on the surveyed center line of the ramp road; thence with the said right of way line, a line 60 feet east of and parallel to the surveyed center line of the ramp road, N. 25°29' W., 106.6 feet to a point opposite the P.C. of a 4 degree curve to the right at survey station 1+06.6; thence with a line parallel to the curve in a northerly direction 406 feet to a point opposite the P.T. of the curve at survey station 5+30.3; thence N. 8°32' W., 69.7 feet to a point opposite survey station 6+00; thence with an offset line in the right of way N. 81°28' E., 25 feet to a corner in the right of way line; thence, leaving the road right of way line, N. 28°36' W., 473 feet to a point in the center line of the Elza Gate Road; thence S. 60°15' W., 60 feet to a point; thence S. 65°10' W., 167 feet to a metal marker; thence N. 5°10' E., 290 feet to a metal marker; thence N. 46°14' W., 300 feet to a metal marker; thence N. 33°41' W., 222 feet to a metal marker; thence N. 28°06' W., 487 feet to a metal marker; thence N. 30°19' W., 314 feet to a metal marker; thence N. 29°07' W., 561 feet to a metal marker; thence N. 40°21' W., 297 feet to a metal marker; thence N. 79°37' W., 148 feet to a metal marker; thence S. 83°33' W., 499 feet to a metal marker; thence S. 69°17' W., 270 feet to a metal marker; thence S. 77°33' W., 163 feet to a metal marker; thence N. 87°49' W., 432 feet to a metal marker; thence S. 67°08' W., 295 feet to a metal marker; thence S. 62°50' W., 407 feet to a metal marker; thence S. 84°54' W., 293 feet to a metal marker at a road; thence S. 9°37' W., 556 feet to a metal marker at a drain; thence N. 69°02' W., 243 feet to a metal marker; thence S. 43°41' W., 415 feet to a metal marker; thence S. 48°46' W., 321 feet to a metal marker at the east edge of a rock outcrop; thence S. 55°19' W., 1423 feet to a metal marker; thence S. 47°10' W., 635 feet to a metal marker; thence S. 48°50' W., 385 feet to a metal marker; thence N. 37°31' W., 70 feet, crossing a creek, to a metal marker; thence N. 39°27' E., 625 feet to a metal marker; thence N. 41°33' W., 151 feet to a metal marker in the southeast line of the right of way for the Union Valley Road; thence with the road right of way line, a line 40 feet southeast of and parallel to the center line of the Union Valley Road, as it meanders in a northeasterly direction approximately 2650 feet to a metal marker (Coordinates: N. 599,324; E. 2,537,516) on the south side of the Elza Gate Road; thence N. 78°42' W., 102 feet to a metal marker in the northwest line of the right of way for the Union Valley Road; thence with the road right of way line, a line 40 feet northwest of and parallel to the center line of the Union Valley Road, in a southwesterly direction approximately along a bearing and distance of S. 49°38' W., 607 feet to a metal marker; thence leaving the road right of way line, N. 28°06' W., 299 feet to a metal marker; thence N. 0°51' E., 183 feet to a metal marker; thence N. 49°16' E., 242 feet to a metal marker; thence N. 48°56' W., 751 feet to a metal marker; thence S. 80°56' W., 213 feet to a metal marker; thence S. 41°34' W., 236 feet to a metal marker; thence N. 12°02' W., 105 feet to a metal marker; thence N. 44°04' E., 246 feet to a metal marker; thence N. 29°36' W., 384 feet to a metal marker; thence N. 58°15' W., 720 feet to a metal marker; thence N. 73°22' W., 187 feet to a metal marker; thence N. 83°17' W., 91 feet to a metal marker; thence S. 54°47' W., 1375 feet, passing AEC Monument 426 at 234 feet, to a metal marker; thence N. 42°06' W., 410 feet to a metal marker; thence N. 66°09' E., 1628 feet to a metal marker in the southwest line of the right of way for the Elza Gate Road; thence with the road

right of way line, a line 50 feet southwest of and parallel to the center line of the Elza Gate Road, as it curves to the right in a northwesterly direction approximately 790 feet to a metal marker (Coordinates: N. 601,633; E. 2,534,691) in the northwest line of the right of way for the Emory Valley Road; thence with the road right of way line, a line 40 feet northwest of and parallel to the center line of the Emory Valley Road, in a southwesterly direction approximately along a bearing and distance of S. 64°13' W., 564 feet to a metal marker; thence, leaving the road right of way line, N. 23°22' W., 781 feet to a metal marker; thence S. 61°01' W., 314 feet to a metal marker; thence N. 44°34' W., 61 feet to a metal marker; thence N. 35°53' E., 522 feet to a metal marker; thence N. 12°09' W., 320 feet to a concrete monument (US-TVA Corner No. RT BP-71); thence N. 27°34' W., 397 feet to a metal marker; thence N. 41°28' W., 182 feet to a metal marker; thence N. 11°46' W., 118 feet to a metal marker; thence N. 39°45' W., 152 feet to a metal marker; thence S. 46°33' W., 286 feet to a metal marker; thence S. 35°51' W., 381 feet to a metal marker; thence N. 9°22' W., 314 feet to a metal marker on the southeast side of a trail; thence along the side of the trail N. 40°59' E., 399 feet to a metal marker; thence N. 8°28' W., 366 feet, crossing the trail, to a metal marker (Coordinates: N. 603,921; E. 2,533,095) in the southwest line of the right of way for the Elza Gate Road; thence with the said southwest right of way line, a line 100 feet southwest of and parallel to the center line of the Elza Gate Road, as it meanders in a northwesterly direction approximately 2525 feet to a metal marker (Coordinates: N. 605,713; E. 2,531,335); thence, leaving the road right of way line, S. 68°40' W., 281 feet to a metal marker; thence S. 73°57' W., 187 feet to a metal marker; thence S. 50°27' W., 602 feet to a metal marker; thence S. 59°10' W., 530 feet to a metal marker; thence S. 38°41' W., 216 feet to a metal marker; thence S. 46°08' W., 819 feet to a metal marker; thence S. 60°56' W., 359 feet to a metal marker; thence S. 45°55' W., 184 feet to a metal marker; thence N. 6°15' W., 263 feet to a metal marker; thence N. 67°56' E., 286 feet to a metal marker; thence N. 22°20' E., 361 feet to a metal marker in a fence line; thence with the fence line N. 81°42' E., 51 feet to a fence corner; thence S. 60°52' E., 85 feet to a fence angle; thence, leaving the fence line, S. 44°46' E., 122 feet to a metal marker; thence N. 40°32' E., 231 feet to a metal marker; thence N. 39°59' W., 395 feet to a metal marker; thence N. 36°32' E., 371 feet to a fence corner; thence with a fence line N. 54°40' E., 280 feet to a fence corner; thence S. 80°26' E., 245 feet to a fence corner; thence N. 58°21' E., 973 feet to a fence corner; thence N. 37°10' W., 230 feet to a fence angle; thence, leaving the fence line, N. 23°03' E., 131 feet to a metal marker; thence S. 52°26' E., 323 feet to a metal marker; thence N. 51°59' E., 458 feet, crossing the Elza Gate Road at 182 feet, to a metal marker; thence N. 11°45' W., 913 feet to a metal marker; thence S. 64°57' W., 281 feet to a metal marker; thence S. 55°39' W., 476 feet to a metal marker; thence N. 52°45' W., 224 feet to a metal marker; thence N. 62°53' E., 388 feet to a metal marker; thence N. 6°04' W., 346 feet to a metal marker; thence S. 68°52' W., 261 feet to a metal marker; thence N. 71°35' W., 181 feet to a point on the southeast right of way line of a railroad spur track, said point being S. 71°35' E., 40 feet, more or less, from approximate survey station 20+15 on the surveyed center line of the said spur track location; thence with the right of way line of the spur track (a detailed description of which is recited hereinafter), as it extends northeasterly and easterly to a point opposite survey station 2+91.8, said point being the point where the spur track right of way line intersects

the southwest line of the right of way for the main track of the Louisville & Nashville Railroad; thence with the southwest right of way line of the Louisville & Nashville Railroad, a line 150 feet southwest of and parallel to the center line of the said main track, S. 43°50' E., 600 feet, more or less, to the Clinch River; thence with the river as it meanders downstream to the point of beginning.

Also there are included within the above described Parcel No. 1 two islands lying in the Clinch River, one island, known as Jones Island, being located approximately 1,550 feet upstream from Edgemoor Bridge and having a length of approximately 2,075 feet, as measured in a straight line between its upstream and downstream tips, and an approximate maximum width of 275 feet; and the second island, known as Waller Island, being located approximately 250 feet upstream from Jones Island, and having a length of approximately 1,350 feet, as measured in a straight line between its upstream and downstream tips, and an approximate maximum width of 350 feet.

The land described above as Parcel No. 1 contains a net total of 402 acres, more or less.

PARCEL No. 2

Beginning at a metal marker (Coordinates: N. 600,144; E. 2,533,154); thence S. 54°02' W., 751 feet to a metal marker; thence N. 75°00' W., 252 feet to a metal marker; thence N. 66°09' E., 931 feet to the point of beginning, and containing 1.5 acres, more or less.

PARCEL No. 3

Beginning at a metal marker (Coordinates: N. 599,524; E. 2,531,298); thence S. 58°11' W., 162 feet to a metal marker; thence N. 86°24' W., 228 feet to a metal marker; thence N. 7°54' E., 520 feet to a metal marker; thence S. 33°33' E., 533 feet to the point of beginning, and containing 2.5 acres, more or less.

The land described above as comprising Parcels 1, 2, and 3 contains a net total of 406 acres, more or less.

Furthermore, such appurtenant right, title, and interest in the bed of the Clinch River as may attach to the title of Parcel No. 1 of the hereinabove described land.

Description of Center Line and Southeast Right of Way Line of Relocated Road

The center line of the relocation as it extends from survey station 5+50 to survey station 61+22.2 is defined by the following courses: N. 38°18' E., 2326.7 feet to the P.C. of a 30-minute curve at survey station 28+76.7, with the 30-minute curve, as it curves to the right in a northeasterly direction, 2716.6 feet to the P.T. of the curve at survey station 55+93.3, and N. 51°53' E., 528.9 feet to survey station 61+22.2.

The right of way line between survey stations 5+50 and 61+22.2 is parallel to the center line of the relocation and distant therefrom as follows: 60 feet between survey stations 5+50 and 22+50; 70 feet between survey stations 22+50 and 25+00; 60 feet between survey stations 25+00 and 37+00; 100 feet between survey stations 37+00 and 42+50; 60 feet between survey stations 42+50 and 61+00, 80 feet between survey stations 61+00 and 61+22.2.

Description of Center Line and Right of Way Line of Railroad Spur Track

The center line of the spur track extends from approximate survey station 20+15 to survey station 2+91.8 on the following courses: N. 26°10' E., 150 feet, more or less, to the tangent point of a 6 degree curve at survey station 18+64.7, and with the 6 degree curve, as it curves to the right northeasterly and easterly for a distance of 1572.9 feet to survey station 2+91.8. The right of way line between approximate survey sta-

tion 20+15 and survey station 2+91.8 is southeast and south of and parallel to the center line of the spur track location and distant therefrom as follows: 40 feet between survey stations 20+15 and 16+50, 65 feet between survey stations 16+50 and 11+00, 90 feet between survey stations 11+00 and 8+00, 115 feet between survey stations 8+00 and 2+91.8.

NOTE: The positions of corners and directions of lines used in the above descriptions are referred to the Tennessee Coordinate System, Lambert Projection.

The foregoing lands and rights are transferred subject to the existing rights of third parties; to the requirement that the Tennessee Valley Authority shall pay the costs of relocation of Atomic Energy Commission roads, the Atomic Energy Commission-University of Tennessee farm, and any other facilities of the Atomic Energy Commission presently located on said lands, which are affected by the use of the lands by the Tennessee Valley Authority; to the right of the Atomic Energy Commission to continue to use such of the lands as have their surfaces above 800 feet above mean sea level until such time as said lands are required for recreational use or development by the Tennessee Valley Authority, or other public agencies, or are otherwise rendered unuseable by reason of the Melton Hill project; to the right of the Atomic Energy Commission to continue to use the remainder of said lands until such time as the Melton Hill Reservoir is initially filled; to the right of the Atomic Energy Commission to use and maintain, or to permit the use and maintenance of any roads presently located on such lands and not flooded by the Melton Hill Reservoir or otherwise obliterated by the Tennessee Valley Authority in the relocation, raising or adjustment of such roads or portions thereof, for which relocation, raising, or adjustment, and the cost thereof, the Tennessee Valley Authority shall be responsible; to the right of the Atomic Energy Commission, which right remains subordinate to the requirements of section 26a of the Tennessee Valley Authority Act of 1933, as amended, to place water, gas, electricity, communications or other utility-type lines or pipes in, under, or upon such lands; to the power of the Atomic Energy Commission to convey easements to the local entity chosen under the Atomic Energy Community Act of 1955, for public road use over such portions of the existing River Road as are needed for the community system of roads and streets within the Minimum Geographic Area of Oak Ridge, Tennessee; and to rights of access to the River Road, affecting strips of the above described land extending in a westerly direction from the west side of River Road at locations to be approved by the Tennessee Valley Authority, which approval shall not be unreasonably withheld.

This 16th day of January, 1959.

ROGER W. JONES,
Acting Director,
Bureau of the Budget.

[F.R. Doc. 59-610; Filed, Jan. 22, 1959;
8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FLOYD A. MECHLING

Statement of Changes in Financial Interests

Pursuant to subsection 302(c), Part II, Executive Order 10647. (20 F.R. 8769) "Providing for the Appointment of Certain Persons under the Defense Production Act of 1950, as amended," I hereby furnish for filing with the Division of the Federal Register for publication in the FEDERAL REGISTER the following information showing any changes in my financial interests and business connections as heretofore reported and published (22 F.R. 996; 22 F.R. 6584; 23 F.R. 1062; 23 F.R. 6730) during the six months' period ended January 29, 1959:

Additions: None.

Deletions: None.

Dated: January 29, 1959.

F. A. MECHLING.

[F.R. Doc. 59-620; Filed, Jan. 22, 1959;
8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12037 etc.; FCC 59M-70]

BROADCASTERS, INC., ET AL.

Order Continuing Hearing

In re applications of Broadcasters, Inc., South Plainfield, New Jersey, Docket No. 12037, File No. BP-10587; Eastern Broadcasting Company, Inc. (WDRF), Chester, Pennsylvania, Docket No. 12038, File No. BP-10722; Tri-County Broadcasting Corp., Plainfield, New Jersey, Docket No. 12039, File No. BP-10878; for construction permits.

The Hearing Examiner having under consideration motion for continuance filed by Broadcasters, Inc., on January 14, 1959;

It appearing that counsel for all parties have agreed to the continuance requested;

It is ordered, This 15th day of January 1959, that the motion is granted, and that the dates designated for various procedural steps herein are postponed as follows:

	From—	To—
Date for service of exhibits under issue	Jan. 16, 1959	Jan. 23, 1959.
Hearing date	Jan. 19, 1959, at 2:00 p.m.	Jan. 29, 1959, at 2:00 p.m.

Released: January 16, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-624; Filed, Jan. 22, 1959;
8:48 a.m.]

[Docket No. 12476; FCC 59M-72]

RADIO MID-POM, INC.**Order Rescheduling Hearing**

In re application of Radio Mid-Pom, Inc., Middleport-Pomeroy, Ohio, Docket No. 12476, File No. BP-11682; for construction permit.

It is ordered, this 15th day of January 1959, that the hearing in the above-entitled matter presently erroneously scheduled to reconvene on February 27, 1959, is hereby rescheduled to reconvene at 9:00 a.m., January 27, 1959, in the Commission's offices in Washington, D.C.

Released: January 19, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] MARY JANE MORRIS,
Secretary.[F.R. Doc. 59-625; Filed, Jan. 22, 1959;
8:48 a.m.]

[Docket Nos. 12488, 12489; FCC 59M-69]

**YOUNG PEOPLE'S CHURCH OF THE
AIR, INC. AND WJMJ BROADCAST-
ING CORP.****Order Continuing Hearing**

In re applications of The Young People's Church of the Air, Inc., Philadelphia, Pennsylvania, Docket No. 12488, File No. BPH-2394; WJMJ Broadcasting Corporation, Philadelphia, Pennsylvania, Docket No. 12489, File No. BPH-2423; for construction permits.

The Hearing Examiner having under consideration informal request of counsel for WJMJ Broadcasting Corporation for continuance of the hearing herein;

It appearing that counsel for all other participating parties have informally consented to immediate consideration and grant of the request;

It is ordered, This 15th day of January 1959, that the above request is granted; and the hearing now scheduled for January 22, 1959, is continued until February 25, 1959, at 10:00 a.m.

Released: January 16, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] MARY JANE MORRIS,
Secretary.[F.R. Doc. 59-626; Filed, Jan. 22, 1959;
8:48 a.m.]

[Docket No. 12603; FCC 59M-75]

**WILLIAM F. HUFFMAN RADIO, INC.
(WFHR)****Order Continuing Hearing**

In re application of William F. Huffman Radio, Inc. (WFHR), Wisconsin Rapids, Wisconsin, Docket No. 12603, File No. BP-11986; for construction permit.

It is ordered, This 16th day of January 1959, that the above-entitled matter is continued without date pending the filing of a Petition for Leave to Amend Appli-

No. 16—5

cation to be filed by the applicant, which, if granted, may obviate the necessity for a further hearing.

Released: January 19, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] MARY JANE MORRIS,
Secretary.[F.R. Doc. 59-627; Filed, Jan. 22, 1959;
8:48 a.m.]

[Docket No. 12604; FCC 59M-74]

**BLUE ISLAND COMMUNITY BROAD-
CASTING CO., INC.****Order Continuing Hearing**

In re application of Blue Island Community Broadcasting Company, Inc., Blue Island, Illinois, Docket No. 12604, File No. BPH-2458; for construction permit.

The Hearing Examiner having under consideration a "Petition for Leave to Amend" filed on January 12, 1959, by Blue Island Community Broadcasting Company, Inc., requesting leave to amend its above-entitled application to change the facilities proposed from a Class A station to operate on 96.7 megacycles (Channel 244) to a Class B station to operate on 105.9 megacycles (Channel No. 290); and

It appearing that the time allowed for the other parties herein to respond to the above-described petition will not expire until the close of business on Monday, January 19, 1959; that the hearing on the application is now scheduled to commence on Tuesday, January 20, 1959, at 10:00 a.m., and that it now appears unlikely that the amendatory petition of applicant Blue Island can be acted on prior to January 20, 1959;¹

Accordingly, it is ordered, On the Hearing Examiner's own motion, this 16th day of January 1959, that the hearing now scheduled for January 20, 1959, in this matter is continued without date pending action on Blue Island's Petition for Leave to Amend.

Released: January 19, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] MARY JANE MORRIS,
Secretary.[F.R. Doc. 59-628; Filed, Jan. 22, 1959;
8:48 a.m.]

[Docket Nos. 12732, 12733; FCC 59-27]

**F. M. RADIO & TELEVISION CORP.
AND NORMAN E. KAY****Order Designating Applications for
Consolidated Hearing on Stated
Issues**

In re applications of F. M. Radio & Television Corporation, Escondido, California, Docket No. 12732, File No. BP-

¹ The Chief of the Commission's Broadcast Bureau has not responded as yet to the subject petition.

9776; Norman E. Kay, Del Mar, California, Docket No. 12733, File No. BP-12089; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 14th day of January 1959;

The Commission having under consideration the above-captioned applications of F. M. Radio & Television Corporation for a construction permit for a new standard broadcast station to operate on 1510 kilocycles with a power of 5 kilowatts, directional antenna, unlimited time, at Escondido, California, and of Norman E. Kay for a construction permit for a new standard broadcast station to operate on 1490 kilocycles with a power of 250 watts, unlimited time, at Del Mar, California;

It appearing that, except as indicated by the issues specified below, both applicants are legally, financially, technically, and otherwise qualified to operate their proposed stations, but that the operations as proposed in the above-captioned applications are mutually exclusive due to overlap of their 2 and 25 mv/m contours which is prohibited by § 3.37 of the Commission rules; that the interference which would be received by the proposed operation of F.M. Radio & Television Corporation from Stations KGA, Spokane, Washington, and KASK (formerly KOCS), Ontario, California, would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c) of the Commission rules; that the proposed operation of Norman E. Kay would involve mutual interference with the existing (1490 kc, 250 w, U) and the authorized (1500 kc, 10 kw, DA-1, U) operations of Station KBLA, Burbank, California, and with Stations KDB, Santa Barbara, California (1490 kc, 250 w, U), KPAS, Banning, California (1490 kc, 250 w, U), KWIZ, Santa Ana, California (1480 kc, 1 kw, DA-N, U), and will cause interference to Station KICO, Calexico, California (1490 kc, 250 w, U); that his proposed 25 mv/m contour would overlap the 2 mv/m contour of Station XEAU, Tijuana, Mexico (1470 kc, 5 kw, U), in contravention of § 3.37 of the Commission rules; and that information should be submitted to show that Del Mar is a separate integrated community; and

It further appearing that Willard Gleason, president and controlling stockholder of the F. M. Radio & Television Corporation, secured the introduction of a bill in Congress to compensate him for alleged losses and damages resulting from the Commission's deletion of television Channel 1 at Riverside, California; that Congress referred the said bill to the United States Court of Claims for its findings of fact and conclusions of law; that in the Court's opinion in said proceeding, the Court stated that "the plaintiff's representations to the FCC which resulted in a construction permit for Channel 1 were misleading" and "plaintiff's intermingling of radio losses with those respecting television casts serious doubt on the credibility of the plaintiff's evidence with respect to television losses, if any, and vitiates any possible equities in his favor" (Willard

Gleeson, Individually and as President and principal owner of Broadcasting Corporation of America, and its stock, v. The United States, Congress 4-53); that, thus, questions obtain as to whether Willard Gleeson has made misrepresentations to the Commission relative to the Channel 1 matter and, therefore, whether F. M. Radio & Television Corporation possesses the requisite qualifications to be the licensee of a broadcast station; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applicants and other parties in interest were advised, by letter dated October 13, 1958, of the aforementioned deficiencies and that the Commission was of the opinion that a hearing on these applications is necessary; and

It further appearing that both applicants filed timely replies to the Commission's letter, but that Norman E. Kay did not submit the information requested; and

It further appearing that F. M. Radio & Television Corporation contends in its reply of May 15, 1958 that when its instant proposal was originally filed on March 29, 1955 it was in compliance with § 3.28(c) of the Commission rules because, while the interference received affected more than 10 percent of the population in its normally protected contour, the proposal would provide the first standard broadcast nighttime facility to Escondido; and that the Commission's subsequent grant on August 1, 1957 of a new unlimited time standard broadcast station, KOWN, in Escondido "most assuredly deprived F. M. Radio & Television Corporation of some of its rights" since the instant proposal would no longer provide the first such local nighttime service in the city and, thus, would no longer comply with § 3.28(c); but it should be noted that F. M. Radio & Television Corporation filed neither an objection to the KOWN proposal before it was granted nor a timely protest to, or petition for reconsideration of, the grant after it was made; and

It further appearing that the licensees of Stations KBLA, KDB, KWIZ, and KICO, advised by letters dated November 5, November 10, November 5, and October 19, 1958, respectively, that they would appear and participate at a hearing on the application of Norman E. Kay; and

It further appearing that the Commission, after consideration of the above, is of the opinion that a hearing is necessary;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the proposed operations and the availability of other primary service to such areas and populations.

2. To determine whether the instant proposals would involve overlap of the 2 and 25 mv/m contours in contravention of § 3.37 of the Commission rules.

3. To determine whether, because of interference received from Stations KGA, Spokane, Washington, and KASK, Ontario, California, the proposed operation of F. M. Radio & Television Corporation would comply with § 3.28(c) of the Commission rules; and, if compliance is not achieved, whether circumstances exist which would warrant a waiver of said section of the rules.

4. To determine whether the proposed operation of Norman E. Kay would cause objectionable interference to Stations KBLA, Burbank (existing and authorized operations); KDB, Santa Barbara; KPAS, Banning; KWIZ, Santa Ana; and KICO, Calexico (all in California), or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the proposed 25 mv/m contour of the instant proposal by Norman E. Kay would overlap the 2 mv/m contour of Station XEAU, Tijuana, Mexico, in contravention of § 3.37 of the Commission rules.

6. To determine whether the city of Del Mar, California is a separate integrated community within the meaning of § 3.30 of the Commission rules.

7. To determine whether Willard Gleeson, president and majority stockholder of the F. M. Radio & Television Corporation, made misleading statements or misrepresentations to the Commission relative to the Channel 1 television construction permit issued to Broadcasting Corporation of America and, if so, whether F. M. Radio & Television Corporation possesses the requisite qualifications to be the licensee of a broadcast station.

8. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

9. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

It is further ordered, That Broadcasters of Burbank, Inc., KDB Broadcasting Company, Stevens Broadcasting, Inc., The Voice of the Orange Empire, Inc., Ltd., and Charles R. Love, licensees of Stations KBLA, KDB, KPAS, KWIZ, and KICO, respectively, are made parties to this proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and respondents herein, pursuant to § 1.140 of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the issues in this proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the

applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 19, 1959.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-629; Filed, Jan. 22, 1959; 8:48 a.m.]

[Docket No. 12713; FCC 59M-71]

INTRASTATE BROADCASTERS

Order for Prehearing Conference

In re application of Harriscope, Inc., Abbot London & Saul R. Levine, d/b as Intrastate Broadcasters, Pomona-Clearmont, California, Docket No. 12713, File No. BP-11687; for construction permit.

A prehearing conference in the above-entitled proceeding will be held on Thursday, February 5, 1959, beginning at 10:00 a.m. in the offices of the Commission, Washington, D.C. This conference is called pursuant to the provisions of § 1.111 of the Commission's rules and the matters to be considered are those specified in that section of the rules.

It is so ordered, This the 15th day of January 1959.

Released: January 16, 1959.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-630; Filed, Jan. 22, 1959; 8:48 a.m.]

[Docket No. 12720; FCC 59M-88]

VALLEY BROADCASTING CO. AND MINERS BROADCASTING SERVICE, INC.

Order Scheduling Prehearing Conference

In re applications of Valley Broadcasting Company, Lehigh, Pennsylvania, Docket No. 12720, File No. BP-11651; Miners Broadcasting Service, Inc., Kingston, Pennsylvania, Docket No. 12721, File No. BP-11795; for construction permits.

The Hearing Examiner having under consideration the above-entitled proceeding;

It is ordered, This 15th day of January 1959, that all parties, or their attorneys, who desire to participate in the proceeding, are directed to appear for a prehearing conference, pursuant to the provisions of § 1.111 of the Commission's rules, at the Commission's offices in Washington, D.C., at 10:00 a.m., February 5, 1959.

Released: January 16, 1959.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-631; Filed, Jan. 22, 1959; 8:48 a.m.]

[Docket Nos. 12730, 12731; FCC 59M-77]

RADIO SOUTH, INC. (WXLI) AND JACK WILLIAMS (WAYX)

Order Scheduling Hearing

In re applications of Radio South, Inc. (WXLI), Dublin, Georgia, Docket No. 12730, File No. BMP-7946; Ethel Woodward Williams, Jack Williams, Jr., Heyward Burnett and J. Mack Barnes as executors of the last will and testament of Jack Williams, deceased (WAYX), Waycross, Georgia, Docket No. 12731, File No. BP-12295; for construction permits.

It is ordered, This 16th day of January 1959, that Elizabeth C. Smith will preside at the hearing in the above-entitled proceeding which is hereby scheduled to

commence on April 2, 1959, in Washington, D.C.

Released: January 19, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-632; Filed, Jan. 22, 1959; 8:48 a.m.]

[Docket Nos. 12732, 12733; FCC 59M-78]

F. M. RADIO & TELEVISION CORP. AND NORMAN E. KAY

Order Scheduling Hearing

In re applications of F. M. Radio & Television Corporation, Escondido, Cali-

fornia, Docket No. 12732, File No. BP-9776; Norman E. Kay, Del Mar, California, Docket No. 12733, File No. BP-12089; for construction permits.

It is ordered, This 16th day of January 1959, that H. Gifford Irion will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 2, 1959, in Washington, D.C.

Released: January 20, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-633; Filed, Jan. 22, 1959; 8:48 a.m.]

