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Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of the Navy

Effective upon publication in the FEDERAL REGISTER, subparagraph (6) is added to paragraph (a) of § 6.106 as set out below.

§ 6.106 Department of the Navy.

(a) *General.* * * *

(6) Not to exceed 50 positions of Resident-in-Training at U.S. Naval Hospitals which have residency training programs, when filled by residents assigned as affiliates for part of their training from non-Federal Hospitals. Assignments to these positions shall be on a temporary (full time or part time) or intermittent basis, shall not amount to more than six months for any person, and shall be only to positions excepted from the Classification Act under the provisions of Public Law 330 of the 80th Congress.

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
*Executive Assistant to
the Commissioners.*

[F.R. Doc. 61-11352; Filed, Nov. 29, 1961; 8:54 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[1961 C.C.C. Grain Price Support Bulletin 1, Supp. 2, Amdt. 4, Wheat]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1961-Crop Wheat Loan and Purchase Agreement Program

ARIZONA; BASIC COUNTY SUPPORT RATES

The regulations issued by the Commodity Credit Corporation published in 26 F.R. 3873, 6697, 7247, 8963 and containing the specific requirements of the 1961-crop wheat price support program are hereby amended as follows:

Section 421.147(a) is amended by increasing the following basic county support rates:

ARIZONA		
County	Rate per bushel	
	From—	To—
Cochise.....	\$1.76	\$1.77
Santa Cruz.....	1.77	1.80

[Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; 15 U.S.C. 714c, 7 U.S.C. 1441, 1421]

Effective date. Upon publication in the FEDERAL REGISTER.

Signed in Washington, D.C., on November 24, 1961.

E. A. JAENKE,
*Acting Executive Vice President,
Commodity Credit Corporation.*

[F.R. Doc. 61-11337; Filed, Nov. 29, 1961; 8:51 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service and Agricultural Stabiliza- tion and Conservation Service (Mar- keting Agreements and Orders), Department of Agriculture

SUBCHAPTER A—MARKETING ORDERS

[Milk Order 21]

PART 921—MILK IN OZARKS MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Ozarks marketing area (7 CFR Part 921), it is hereby found and determined that:

(a) The following provision of the order appearing in § 921.11(b) does not tend to effectuate the declared policy of the Act during the month of December 1961: the figure "40".

(b) By notice of proposed rule making issued on November 14, 1961 (26 F.R. 10810; F.R. Doc. 61-11001), by the Deputy Administrator, Price and Production, Agricultural Stabilization and Conservation Service, interested parties were advised that this action was under consideration, and were given opportunity to submit written views, data and arguments with respect thereto. No opposition to it was expressed. Several interested parties indicated their support of the proposed suspension.

(c) Thirty days notice of effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or

extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) This suspension order will ease the disposal of milk surplus to the fluid needs of the market during a period of unusually heavy supplies of producer milk.

Therefore, good cause exists for making this order effective December 1, 1961.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the month of December 1961.

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

Effective date: December 1, 1961.

Signed at Washington, D.C., on November 27, 1961.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 61-11333; Filed, Nov. 29, 1961; 8:50 a.m.]

[Tangerine Reg. 228]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1080 Tangerine Regulation 228.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the pro-

duction area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 28, 1961, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810-51.1834 of this title; 25 F.R. 8216).

(2) Tangerine Regulation 227 (§ 933.1079; 26 F.R. 11035) is hereby terminated effective at 12:01 a.m., e.s.t., December 1, 1961.

(3) During the period beginning at 12:01 a.m., e.s.t., December 1, 1961, and ending at 12:01 a.m., e.s.t., December 21, 1961, and beginning at 12:01 a.m., e.s.t., December 29, 1961, and ending at 12:01 a.m., e.s.t., January 8, 1962, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, that do not grade at least U.S. No. 1; or

(ii) Any tangerines, grown in the production area, that are of a size smaller than the size that will pack 210 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19½ inches; capacity 1,726 cubic inches).

(4) During the period beginning at 12:01 a.m., e.s.t., December 21, 1961, and ending at 12:01 a.m., e.s.t., December 29, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any tangerines, grown in the production area.

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

Dated: November 29, 1961.

PAUL A. NICHOLSON,
Deputy Director, Fruit and
Vegetable Division, Agricultural
Marketing Service.

[F.R. Doc. 61-11417; Filed, Nov. 29, 1961;
11:23 a.m.]

PART 927—MILK IN NEW YORK-NEW JERSEY MILK MARKETING AREA

Subpart—Classification and Accounting Rules and Regulations

APPROVAL OF TEMPORARY AMENDMENT

Pursuant to provisions of § 927.36 of the order, as amended, regulating the handling of milk in the New York-New Jersey milk marketing area (7 CFR Part 927), it is hereby determined that an emergency exists which requires the immediate adoption of the temporary amendment issued by the Market Administrator of said order on November 13, 1961, amending rules and regulations (7 CFR Part 927.100 et seq.), heretofore issued by him pursuant to said order. Said temporary amendment is hereby approved to become effective December 1, 1961.

It is necessary that the said temporary amendment to the rules and regulations issued by the Market Administrator be made effective on December 1, 1961, in order to effectuate the terms and provisions of the said order as amended effective December 1, 1961, and to avoid the existence of rules and regulations inconsistent with provisions of the order, as so amended. The changes effected by this amendment do not require substantial or extensive preparation by handlers prior to the effective date. Accordingly, notice of proposed rule making, public procedure thereon, and publication hereof 30 days prior to the effective date specified herein are found to be impracticable, unnecessary, and contrary to the public interest.

Copies of the temporary amendment to the rules and regulations may be procured from the Market Administrator, 205 East 42d Street, New York 17, New York.

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

Signed at Washington, D.C., on November 27, 1961.

JAMES T. RALPH,
Assistant Secretary.

The amendment issued October 26, 1961 (26 F.R. 10155) to the order regulating the handling of milk in the New York-New Jersey milk marketing area (7 CFR Part 927), in effect, constitutes an amendment to the accounting rules and regulations (7 CFR 927.100 et seq.) heretofore issued by the Market Administrator with respect to milk received by handlers in tank trucks at farms. In order to incorporate this amendment of the order into the rules and regulations issued by the Market Administrator, the

rules and regulations must be redrafted as set forth herein.

Pursuant to the provisions of § 927.36 of said Order No. 27, as amended, there is set forth below a temporary amendment to the accounting rules and regulations subject to the approval of the Secretary, which is a recodification of the specified sections of the rules and regulations. The amendment includes no substantive change from the previous rules and regulations issued by the Market Administrator except to the extent that such rules and regulations were required to be changed by the said amendment to the order.

The temporary amendment is as follows:

1. Amend § 927.140 by substituting for the word "plant" the words "plant or bulk tank plant".

2. Amend § 927.141 by deleting the first word "Tabulate" and substituting therefor the following: "Tabulate the total pounds of milk received at farms by the bulk tank unit and".

3. Amend § 927.142 by deleting the words "Tabulate and classify" and substituting therefor the following: "Tabulate and classify the butterfat disposed of in the form of milk by the bulk tank unit and". Extend the last sentence by adding "or by the bulk tank unit".

4. Amend § 927.143 by rewriting the preamble to read as follows: "Subtract the total butterfat accounted for from the total butterfat to be accounted for. The remainder shall be known as plant loss. In the event that the total butterfat accounted for is greater than the total butterfat to be accounted for, the excess butterfat shall be accounted for as follows:"

5. Amend § 927.143(b) by adding after the words "pool plant" the following: "or the bulk tank unit is a pool bulk tank unit".

6. Amend § 927.180 by inserting immediately before the words "other plants" the following: "bulk tank units and".

7. Amend § 927.202(b) by rewriting it to read as follows:

(b) If the plant is not a pool plant pursuant to § 927.25 or § 927.28 and if the quantity of milk received direct from dairy farmers and from pool and nonpool bulk tank units has a percentage relationship to Class I-A milk leaving the plant which is distributed to outlets which are not other plants sufficient to qualify such plant as a pool plant pursuant to paragraphs (a) or (b) of § 927.29 proceed as follows: assign to such Class I-A milk, milk received direct from dairy farmers and from pool bulk tank units in a quantity not to exceed that required to qualify the plant as a pool plant, except in the case where pursuant to § 927.35(a)(1), a handler has elected not to make such assignments: *Provided*, That plants listed by the Market Administrator pursuant to § 927.14 or § 927.15 can assign such milk only to the extent that Class I-A butterfat exceeds the butterfat in the milk received from other pool plants and from pool bulk tank units.

[Milk Order 27]

PART 927—MILK IN NEW YORK-NEW JERSEY MARKETING AREA

Order Amending Order

§ 927.0 Findings and determinations.

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 the 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) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than December 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The decision of the Secretary containing all amendment provisions of this order was issued November 1961. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective December 1, 1961, and that it would be contrary to the public interest to delay the effective date of this

8. Amend § 927.202(c) by substituting for the word "plants" the words "plants and pool bulk tank units".

9. Amend § 927.202(f) by deleting the words "Federal Order No. 119 regulating the handling of milk in the Connecticut Marketing Area" and substituting therefor the words "another Federal Order". Delete the last part of the paragraph which reads "Federal Order No. 119 or to a pool plant pursuant to such order" and substitute therefor the words "such other Federal Order."

10. Amend § 927.202(g) by deleting the closing words of this paragraph which read "in the marketing area defined under Federal Order No. 119, or to a pool plant pursuant to such order" and substituting the following: "in a marketing area defined under another Federal Order in the following sequence: (1) Class I-B milk in a marketing area regulated by an order with individual-handler pools, (2) Class I-B milk in the marketing area defined in Federal Order No. 119 or to a pool plant regulated by such order, and (3) Class I-B milk in other marketing areas."

11. Amend § 927.202 *Milk assignment*, by adding subparagraphs (1) and (2) to paragraph (g) as follows:

(1) After the assignment pursuant to paragraph (g) of this section, the remaining butterfat in milk from pool bulk tank units shall be assigned, as far as possible, to butterfat in milk classified Class I-B.

(2) Milk from nonpool bulk tank units shall be assigned, as far as possible, to butterfat classified as Class III subject to the butter-cheese adjustment and then to other butterfat classified as Class III.

12. Amend § 927.202(h) by changing the words "paragraph (g)" to read "paragraph (g) (2)".

13. Amend § 927.202(k) by inserting immediately after the words "other pool plants" the words "and pool bulk tank units".

14. Amend § 927.202 *Milk assignment*, by adding subparagraph (1) to paragraph (n) as follows:

(1) If a bulk tank truck containing milk of both pool and nonpool bulk tank units delivers such milk to two or more plants, the pool bulk tank milk may be assigned at the option of the handlers involved to any of the plants involved which have Class I-A or Class I-B classification in amounts available to assign to such delivery unless some other assignment would reduce the amount of payments under § 927.83 of the orders.

15. Amend § 927.230 by inserting immediately after "Half and half":

(Under Product)

Milk received from a bulk tank unit or disposed of by a bulk tank unit.

(Under Test in percent)

Average test of all milk received at farms.

Issued at New York, N.Y., this 13th day of November 1961.

C. J. BLANFORD,
Market Administrator.

[F.R. Doc. 61-11336; Filed, Nov. 29, 1961; 8:51 a.m.]

amendment for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011).

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

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

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

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

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended as follows:

1. Delete the provisos in paragraphs (a) and (a) (3) of § 927.40.

2. Add a new proviso to paragraph (a) (3) of § 927.40 to read as follows: "Provided, That the utilization percentage for the month of October 1961 used in making such computations shall be 54.6 and the utilization percentage for the month of November 1961 shall be the percentage as computed pursuant to this paragraph plus 2.8."

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

Effective date. December 1, 1961.

Signed at Washington, D.C., on November 27, 1961.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 61-11331; Filed, Nov. 29, 1961; 8:50 a.m.]

[Milk Order 47]

PART 947—MILK IN SUBURBAN ST. LOUIS MARKETING AREA

Order Amending Order

§ 947.0 Findings and determinations.

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) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Suburban St. Louis marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective December 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary of Agriculture was issued October 30, 1961, and the decision of the Under Secretary containing all amendment provisions of this order, was issued November 16, 1961. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective December 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011).

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

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

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

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

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Suburban St. Louis marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

1. Delete § 947.13(a) and substitute:

(a) A distributing plant from which a volume equal to not less than 50 percent of the total receipts of approved milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 947.9(c) is distributed during the month as Class I on routes, and from which an average of not less than 7,000 pounds per day or not less than 20 percent of the plant's total Class I milk, whichever is less, is distributed on routes in the marketing area.

2. Delete § 947.51(a) and substitute:

(a) *Class I price.* The price per hundredweight of Class I milk at plants located in the base zone shall be 10 cents less, and at plants located in the northern zone shall be 15 cents less than the St. Louis Federal Order (Part 903 of this chapter) Class I price effective at a pool plant located in the 0- to 30-mile zone.

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

Effective date. December 1, 1961.

Signed at Washington, D.C., on November 27, 1961.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 61-11334; Filed, Nov. 29, 1961; 8:50 a.m.]

[Milk Order 108]

PART 1008—MILK IN INLAND EMPIRE MARKETING AREA

Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Inland Empire marketing area (7 CFR Part 1008), it is hereby found and determined that:

(a) The following provisions of the order, no longer tend to effectuate the declared policy of the Act:

In §§ 1008.12(b) and 1008.15(b) (1) the phrase "during any of the months of February through August".

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions

and to maintain orderly marketing conditions in the marketing area.

(3) This suspension will allow handlers to divert producer milk to nonpool plants during the months of December and January, pending consideration of proposed amendments to the order. The present order provides for diversion during the months of February through August. However, there has recently been a trend toward an excess supply of producer milk in December and January. Pool plants have limited facilities for handling milk in excess of fluid needs. In order that such excess milk may continue to be pooled, accommodation of this matter should not be delayed for the time necessary for analysis of the record evidence and the issuance of a recommended decision, a final decision and an order on the proposed amendments being considered.

(4) This suspension action is based on the request of a handler and producers' associations representing more than 75 percent of the producers supplying the market and evidence presented by them at a hearing held in Spokane, Washington, September 13-14, 1961.

Therefore, good cause exists for making this order effective December 1, 1961.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the period December 1, 1961, through January 31, 1962.

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

Effective date. December 1, 1961.

Signed at Washington, D.C., on November 27, 1961.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 61-11330; Filed, Nov. 29, 1961; 8:50 a.m.]

[Milk Order 124]

PART 1024—MILK IN OHIO VALLEY MARKETING AREA

Order Amending Order

§ 1024.0 Findings and determinations.

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) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Ohio Valley marketing area.

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

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

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

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

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, excluding a cooperative association in its capacity as a handler pursuant to § 1024.17(c), as his pro rata share of such expense, 4 cents per hundredweight or such amount, not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to (i) producer milk, (ii) milk received from a cooperative association in its capacity as a handler pursuant to § 1024.17(c), (iii) other source milk allocated to Class I at a pool plant, and (iv) milk at a fluid milk plant which is a non-pool plant in accordance with § 1024.75 (a) or (b).

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than December 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Assistant Secretary, United States Department of Agriculture, was issued November 6, 1961, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued November 21, 1961. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective December 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011.)

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

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area,

to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

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

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

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Ohio Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order is hereby further amended as follows:

§ 1024.10 [Amendment]

1. In § 1024.10 insert after the word "farmers" wherever it appears the following parenthetical phrase: "(including such milk received from a cooperative association in its capacity as a handler pursuant to § 1024.17(c))".

§ 1024.12 [Amendment]

2. In § 1024.12 delete the period at the end of paragraph (b) and add the following language: "or by a cooperative association in its capacity as a handler pursuant to § 1024.17(c)."

§ 1024.13 [Amendment]

3. In § 1024.13 redesignate paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and insert a new paragraph (b) to read as follows:

(b) Received from producers by a cooperative association in its capacity as a handler pursuant to § 1024.17(c);

§ 1024.14 [Amendment]

4. In § 1024.14(a) delete subparagraph (2) and substitute the following:

(2) producer milk and milk received from a cooperative association in its capacity as a handler pursuant to § 1024.17(c), and

5. Delete § 1024.17 and substitute the following:

§ 1024.17 Handler.

"Handler" means:

(a) Any person who operates a fluid milk plant;

(b) Any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 1024.13; and

(c) Any cooperative association with respect to the milk of its producer members which is delivered for the account of the cooperative association from the farm to the pool plant(s) of another handler in a tank truck owned by, operated by, or under contract to such cooperative association if the cooperative association has notified in writing prior to delivery both the market administrator and the handler to whom the

milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received by the cooperative association at the location of the plant to which it was delivered.

§ 1024.30 [Amendment]

6. In § 1024.30(a)(1) delete subdivision (ii) and substitute the following:

(ii) Fluid milk products received from other pool plants and milk received from a cooperative association in its capacity as a handler pursuant to § 1024.17(c);

§ 1024.31 [Amendment]

7. In § 1024.31(b)(1) delete the language preceding subdivision (i) and delete subdivision (i) and substitute the following: "On or before the 20th day after the end of the month his producer or dairy farmer payroll for such month which shall show for each producer or dairy farmer, as the case may be (and for each pool plant and for each fluid milk plant subject to § 1024.75(b) in the case of those handlers operating such plants): (i) The total pounds of milk received, including for the months of April through July the total pounds of base and excess milk for each producer;"

§ 1024.41 [Amendment]

8. In § 1024.41(b) delete subparagraph (5) and substitute the following:

(5) in shrinkage, excluding shrinkage of other source milk, not to exceed the following:

(i) Two percent of skim milk and butterfat, respectively, in producer milk physically received at a pool plant; plus

(ii) One and one-half percent of skim milk and butterfat, respectively, in milk received at a pool plant from a cooperative association in its capacity as a handler pursuant to § 1024.17(c), except that if the handler of such pool plant files notice with the market administrator on or before the date he submits his monthly report applicable to such milk pursuant to § 1024.30 that he is purchasing such milk on the basis of weights determined at the farm from farm bulk tank measurements the applicable percentage shall be two percent; plus

(iii) One and one-half percent of skim milk and butterfat, respectively, in fluid milk products received at a pool plant in bulk as a transfer from other pool plants; less

(iv) One and one-half percent of skim milk and butterfat, respectively, in fluid milk products transferred in bulk from a pool plant to other plants; and plus

(v) One-half of one percent of skim milk and butterfat, respectively, in producer milk received by a cooperative association in its capacity as a handler pursuant to § 1024.17(c) unless the exception provided in subdivision (ii) of this subparagraph applies; and

§ 1024.42 [Amendment]

9. In § 1024.42 delete paragraphs (a) and (b) and substitute the following:

(a) Compute the total shrinkage for each handler, or for each pool plant in the case of those handlers operating pool plants, by subtracting the skim milk and butterfat, respectively, classified as Class

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I milk pursuant to § 1024.41(a)(1) and as Class II milk pursuant to § 1024.41(b)(1), (2), (3), and (4) (subject to the provisions of §§ 1024.43 through 1024.45) from the receipts of the skim milk and butterfat, respectively, required to be reported pursuant to § 1024.30, and

(b) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section, to (1) the total of the pounds of milk received from producers (excluding milk diverted by the handler), received from a cooperative association in its capacity as a handler pursuant to § 1024.17(c), and received from other pool plants as transfers in the form of fluid milk products in bulk in excess of transfers of such products in bulk to other plants, and (2) the total pounds of other source milk received in bulk in the form of fluid milk products.

§ 1024.44 [Amendment]

10. In § 1024.44 delete the introductory text preceding paragraph (a) and delete paragraph (a) and substitute the following:

Skim milk or butterfat disposed of by a handler from a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1024.17(c) shall be classified as follows:

(a) As Class I milk if transferred or diverted in the form of a fluid milk product to a pool plant of the same handler or of another handler unless utilization in Class II is claimed by the handler or handlers, as the case may be, in their reports submitted pursuant to § 1024.30 or such milk is classified pursuant to paragraph (b) of this section: *Provided*, That the skim milk or butterfat so classified as Class II milk shall be limited to the amount of skim milk or butterfat, respectively, remaining in Class II milk in the transferee plant after making the assignments pursuant to § 1024.46(a)(1) through (4) and the corresponding steps of § 1024.46(b) and any additional amounts of skim milk or butterfat so transferred shall be classified as Class I milk: *And provided further*, That for transfers or diversions between pool plants, if the transferor or diverting plant has other source milk during the month, the skim milk or butterfat so transferred or diverted shall be classified at both plants so as to allocate the highest priced available class utilization to the producer milk at both plants: *And provided also*, That in no case shall the assignment of transferred skim milk or butterfat to Class I in the transferee plant exceed the difference between the transferee plant's total receipts of milk and milk products and the utilization by the transferee plant in Class II;

11. In § 1024.44 redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and insert a new paragraph (b) to read as follows:

(b) If a specified utilization of skim milk and butterfat transferred to a pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1024.17(c) is not claimed by both handlers pursuant to paragraph (a) of this section, such skim

milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the receiving handler after making the assignments pursuant to § 1024.46(a)(7) and the corresponding step of § 1024.46(b);

§ 1024.45 [Amendment]

12. In § 1024.45 delete the language preceding the proviso and substitute the following: "For each month the market administrator shall correct for mathematical and other obvious errors the reports of receipts and utilization submitted pursuant to § 1024.30 by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such handler."

§ 1024.46 [Amendment]

13. In § 1024.46(a) delete subparagraph (1) and substitute the following:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk classified pursuant to § 1024.41(b)(5)(i) through (iv);

14. In § 1024.46(a) delete the word "and" in subparagraph (7), redesignate subparagraph (8) as subparagraph (9) and insert a new subparagraph (8) to read as follows:

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received from a cooperative association in its capacity as a handler pursuant to § 1024.17(c) according to its classification determined pursuant to § 1024.44 (a) or (b); and

§ 1024.53 [Amendment]

15. In § 1024.53 delete the language preceding the mileage schedule and substitute the following: "For that milk received from producers or from a cooperative association in its capacity as a handler pursuant to § 1024.17(c) at a pool plant located 80 miles or more from the County Courthouse in Evansville, Indiana, or Owensboro, Kentucky, whichever is nearer, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1024.51(a) 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:"

§ 1024.60 [Amendment]

16. In § 1024.60 insert after the word "plant(s)" which appears in the language preceding the proviso the words "and by a cooperative association in its capacity as a handler pursuant to § 1024.17 (b) or (c)".

§ 1024.61 [Amendment]

17. In § 1024.61(b) insert after the word "plant" the words "or is received by a cooperative association in its capacity as a handler pursuant to § 1024.17 (b) or (c)".

§ 1024.70 [Amendment]

18. In § 1024.70 delete paragraph (b) and substitute the following:

(b) Add an amount computed by multiplying the pounds of any average deducted from each class pursuant to § 1024.46(a)(9) and the corresponding step in § 1024.46(b) by the applicable class price(s);

§ 1024.71 [Amendment]

19. In § 1024.71 delete paragraph (a) and substitute the following:

(a) Combine into one total the values computed pursuant to § 1024.70 for all handlers operating pool plants and for all cooperative associations in their capacity as handlers pursuant to § 1024.17 (b) or (c) who made the reports prescribed in § 1024.30 and who made the payments pursuant to §§ 1024.80 and 1024.82 for the preceding month;

§ 1024.74 [Amendment]

20. In § 1024.74(a) delete the colon at the end of the introductory text preceding subparagraph (1) and add the following language: "and each cooperative association which is a handler pursuant to § 1024.17 (b) or (c):"

§ 1024.75 [Amendment]

21. In § 1024.75(b)(1) change the reference listed in the second proviso as "§ 1024.44 (c) or (d)" to read "§ 1024.44 (d) or (e)".

§ 1024.80 [Amendment]

22. In § 1024.80 add a new paragraph (g) to read as follows:

(g) In the case of milk received by a handler from a cooperative association in its capacity as a handler pursuant to § 1024.17(c), such handler shall pay on or before the 14th day after the end of each month to such cooperative association for milk so received during the month an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler at which such milk was physically received.

§ 1024.82 [Amendment]

23. In § 1024.82 delete the words "at his pool plant(s)".

§ 1024.83 [Amendment]

24. In § 1024.83 delete the words "at his pool plant(s)".

§ 1024.85 [Amendment]

25. In § 1024.85(b) insert after the word "received" the words "from producers or by a cooperative association in its capacity as a handler pursuant to § 1024.17(c)".

26. Delete § 1024.86 and substitute the following:

§ 1024.86 Expense of administration.

As his pro rata share of the expense of the administration of this part, each handler, excluding a cooperative association in its capacity as a handler pursuant to § 1024.17(c), shall pay to the market administrator on or before the 12th day after the end of each month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe for each hundredweight of skim milk and butterfat contained in his receipts during the month of (a) producer milk

(including such handler's own farm production), (b) milk received from a cooperative association in its capacity as a handler pursuant to § 1024.17(c), and (c) other source milk allocated to Class I milk pursuant to § 1024.46(a)(3) and the corresponding step of § 1024.46(b). A handler operating a fluid milk plant which is a nonpool plant shall pay administrative assessments in accordance with § 1024.75.

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

Effective date. December 1, 1961.

Signed at Washington, D.C., on November 27, 1961.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 61-11332; Filed, Nov. 29, 1961; 8:50 a.m.]

SUBCHAPTER B—PROHIBITIONS OF IMPORTED COMMODITIES

PART 1070—ONIONS

Import Restrictions

This amendment designates the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, as an authorized inspection service for certifying the grade, size, quality and maturity of onion imports.

Order. In § 1070.1 *Onion Regulation No. 1* (26 F.R. 10632), delete paragraphs (e), (f) (1), and (h), and substitute in lieu thereof new paragraphs (e), (f) (1), and (h) as set forth below.

§ 1070.1 *Onion Regulation No. 1.*

(e) *Designation of Governmental inspection services.* The Federal or the Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of onions that are imported, or to be imported, into the United States under the provisions of section 8e of the act.

(f) *Inspection and official inspection certificates.* (1) Inspection by the Federal or Federal-State Inspection Service, or by the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, with appropriate evidence thereof in the form of an official inspection certificate issued by the respective service and applicable to a particular shipment of onions, is required. Each such lot shall be made available and accessible for inspection. Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers of uninspected and uncertified onions should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each im-

porter must give the specified advance notice to the applicable office listed below prior to the time the onions will be imported.

(h) *Definitions.* For the purpose of this part, "Onions" means all varieties of *Allium cepa* marketed dry, except dehydrated onions, onion sets, green onions, and pickling onions. Onions commonly referred to as "braided," that is, with tops, may be imported if they meet the grade and size requirements except for top length. The term "U.S. No. 2" shall have the same meaning as when used in the United States Standards for Onions (§§ 51.2830 to 51.2850, inclusive, of this title; 26 F.R. 2817). Onions meeting the requirements of Canada No. 1 grade and Canada No. 2 grade shall be deemed to comply with the requirements of the U.S. No. 1 grade and the U.S. No. 2 grade, respectively. Application of tolerances, as set forth in § 51.2838 of the United States Standards for Onions, may be used. "Importation" means release from custody of the United States Bureau of Customs.

Findings. It is hereby found that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment beyond the date specified (5 U.S.C. 1001-1011) in that (i) the designation of an additional inspection service for the purposes of this program does not impose any new restrictions under this order, and (ii) the notice of proposed rule-making issued on September 13, 1961 (26 F.R. 8674) included such designation.

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

Dated: November 24, 1961, to become effective December 4, 1961.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F.R. Doc. 61-11320; Filed, Nov. 29, 1961; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER-341]

PART 290—OPERATIONS PURSUANT TO EXEMPTION AUTHORITY

Repeal of Part

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of November 1961.

In Regulation SPR-7, adopted November 27, 1961, the Board is promulgating a new Part 377 which revises, retitles, and renumbers present Part 290 of the Economic Regulations as Part 377 of the Special Regulations. Accordingly, Part 290 is obsolete and should be repealed.

Inasmuch as this action is editorial in nature and imposes no burden upon any person, compliance with the notice, public procedure and effective date requirements of the Administrative Procedure Act is unnecessary.

In consideration of the foregoing, the Civil Aeronautics Board hereby repeals Part 290 of the Economic Regulations. This repeal shall become effective, with respect to any particular exemption authorization, upon the date when, and if, new Part 377 becomes applicable thereto under the provisions of § 377.5.

(Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 416(b), 1001, 72 Stat. 771, 788; 49 U.S.C. 1386, 1481)

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 61-11339; Filed, Nov. 29, 1961; 8:52 a.m.]

SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. No. SPR-7]

PART 377—CONTINUANCE OF EXPIRED AUTHORIZATIONS BY OPERATION OF LAW PENDING FINAL DETERMINATION OF APPLICATIONS FOR RENEWAL THEREOF

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of November 1961.

In a notice of proposed rule making published in the FEDERAL REGISTER on August 3, 1961, 26 F.R. 6994, and circulated to the industry as Economic Regulations Draft Release 31, dated July 28, 1961, Docket 12864, the Board proposed to revise, retitle and renumber Part 290 of the Economic Regulations as Part 377 of the Special Regulations.

Section 377.10(c) of the Notice provides that every renewal application must be filed with the Board not later than 60 days, and that applications involving certificates of public convenience and necessity must be filed 180 days before the expiration date of the temporary authorization concerned unless earlier filing is required by law or by the Board's regulations.

In consideration of the comments filed with respect to the proposed rule, the Board has decided to revise § 377.10(c) to give recognition to the Board's authority to require earlier filing of a particular temporary authorization. Accordingly, the first proviso of § 377.10(c) which states that the prescribed filing dates shall not supersede a requirement for earlier filing contained in any provision of law or the Board's regulations has been expanded to include such requirements when contained in any Board order or temporary authorization.

Interested persons have been afforded opportunity to participate in the formulation of this revision, and due consideration has been given to all relevant matter presented.

The Board has decided to promulgate a new Part 377 which will replace Part 290 and, therefore, is repealing the latter part by concurrent action.

In consideration of the foregoing the Civil Aeronautics Board hereby promul-

gates Part 377 of the Special Regulations (14 CFR Part 377) effective December 30, 1961, to read as follows:

Subpart A—General Provisions

- Sec. 377.1 Definitions.
377.2 Applicability of part.
377.3 Authorizations not licenses with reference to an activity of a continuing nature.
377.4 Procedure to obtain Board interpretation.
377.5 Effective date.

Subpart B—Renewal Applications and Procedure Thereon

- 377.10 Requirements for, and effect of, renewal applications.
377.11 Processing of defective renewal applications.

AUTHORITY: §§ 377.1 to 377.11 issued under sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 1001, 72 Stat. 788; 49 U.S.C. 1481, and secs. 9(b) and 12 of the Administrative Procedure Act, 60 Stat. 242, 244; 5 U.S.C. 1008, 1011.

Subpart A—General Provisions

§ 377.1 Definitions.

As used in this part:

"Act" means the Federal Aviation Act of 1958, as amended.

"Authorization" means any agency certificate, approval, statutory exemption or other form of permission granted pursuant to sections 101(3), 401, 408, 409, 412 and 416 of the Federal Aviation Act of 1958, as amended. Where any operating authorization creates more than one separate route, each of these shall be deemed a separate authorization for the purposes of this part.

"Renewal application" means any application filed in conformity with the requirements of this part which requests either a renewal or a new license and is intended to invoke the provisions of the last sentence of section 9(b) of the Administrative Procedure Act, 5 U.S.C. 1008(b).

"Route" means an authorization which permits an air carrier to render unlimited regularly scheduled service between a specifically designated pair of terminal points and intermediate points, if any.

§ 377.2 Applicability of part.

This part contains the Board's rules implementing the provisions of the last sentence of section 9(b) of the Administrative Procedure Act¹ with regard to applications for renewal of temporary authorizations granted pursuant to sections 101(3), 401, 408, 409, 412 and 416 of the Federal Aviation Act of 1958, as amended: *Provided*, That nothing in this part shall be construed as preventing the Board from terminating at any time, in accordance with law, any authorization or any extension thereof, or as a determination that any given authorization is a license with reference to any activity of a continuing nature within

¹ "In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency."

the meaning of section 9(b) of the Administrative Procedure Act.

§ 377.3 Authorizations not licenses with reference to an activity of a continuing nature.

The Board hereby determines that the following authorizations are not "licenses with reference to any activity of a continuing nature" within the meaning of section 9(b) of the Administrative Procedure Act:

(1) Authorizations granted for a specified period of 180 days or less;

(2) Authorizations other than those granted pursuant to section 401 of the Act which by their terms are subject to termination at an uncertain date upon the happening of an event, including fulfillment of a condition subsequent or occurrence of a contingency. When such an authorization by its terms terminates alternatively upon the happening of an event or the arrival of a specified date, the occurrence of the event prior to the specified date ends the authorization and no previously or subsequently filed renewal application shall be effective to extend such authorization.

§ 377.4 Procedure to obtain Board interpretation.

In any case not expressly provided for by these rules, the Board will determine upon written request by the holder of a temporary authorization or by any competitively affected air carrier or upon its own initiative, whether under section 9(b) of the Administrative Procedure Act any authority granted would be continued in force beyond the expiration date therein specified until final determination of a timely and sufficient renewal application. Written requests for such a determination shall be filed at least 60 days prior to the date herein prescribed for the timely filing of applications for renewal: *Provided*, That filing of such written request shall not affect the requirements for timeliness of renewal applications contained in this part or other applicable Board regulation or order.

§ 377.5 Effective date.

This part shall become effective 30 days after November 30, 1961 but its provisions shall not be applicable to those temporary authorizations which are outstanding and scheduled to expire by their terms within 120 days of the effective date of this regulation or, in the case of certificates of public convenience and necessity issued under section 401, within 240 days thereof.

Subpart B—Renewal Applications and Procedure Thereon

§ 377.10 Requirements for, and effect of, renewal applications.

(a) *Identification of authorization covered by renewal application.* Each renewal application shall identify the authorization or authorizations to which it is intended to relate. The application shall indicate the applicant's intention to rely upon section 9(b) of the Administrative Procedure Act as implemented by this part. In case of applications for renewal of an authorization for route

service, the renewal application shall specifically identify the separate routes which the applicant proposes to continue serving pursuant to the expiring authorization, pending final determination of the renewal application.

(b) *Contents of renewal application.* The application must contain all the information required by law and the Board's regulations, and meet the requirements thereof as to form. The new authorization sought need not be of the same duration as the expiring authorization. If the application relates to renewal of route authority, it must contain, as a minimum, a request for renewed authority to render route service between the terminals named in each separate route for which renewal is requested.

(c) *Timeliness.* The application must be filed and served in compliance with applicable provisions of law and the Board's regulations not later than 60 days before the expiration date of the outstanding temporary authorization to which it relates. In the case of certificates of public convenience and necessity issued under section 401, it must be filed not later than 180 days before the expiration date thereof: *Provided*, That nothing herein shall supersede a requirement for earlier filing in any provision of law, the Board's regulations, any Board orders or any temporary authorization: *Provided further*, That where an authorization pursuant to section 401 of the Act terminates by its terms upon the happening of an event which could not be foreseen, a renewal application filed within 30 days from the time the carrier has notice that the event will occur, or has occurred, shall be deemed timely.

(d) *Effect.* In the case of authorizations which constitute licenses with reference to activities of a continuing nature within the meaning of section 9(b) of the Administrative Procedure Act, the filing of an application complying in all respects with the requirements of paragraphs (a) through (c) of this section shall extend the authorization to which it relates as then outstanding in its entirety, together with all applicable terms, conditions and limitations, until the application has been finally determined by the Board. In the case of routes granted under section 401 of the Act, the duty to render adequate service continues to attach to every point as provided in the expired authorization which is extended pursuant to this provision. The date of final determination of the application shall be the date when the final order determining the application takes effect, or when the applicable period for filing of petitions for rehearing, reargument or reconsideration expires, or when a timely filed petition therefor is denied, whichever occurs latest.

§ 377.11 Processing of defective renewal applications.

When the Board determines that a renewal application does not comply with the requirements of this part, or that it does not relate to a license with reference to an activity of a continuing nature, it will so notify the applicant. The applicant may amend his application to cure the deficiency as a matter of right

at any time prior to the date when the application was due pursuant to § 377.10(c).

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 61-11338; Filed, Nov. 29, 1961;
8:52 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 61-NY-37]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Alteration of Federal Airway

On August 25, 1961, a notice of proposed rule making was published in the FEDERAL REGISTER (26 F.R. 7971) stating that the Federal Aviation Agency was considering the extension of intermediate altitude VOR Federal airway No. 1674 from Albany, N.Y., to Cambridge, N.Y.

No adverse comments were received regarding the proposed alteration.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, the following action is taken:

In § 600.1674 (26 F.R. 1079) the following changes are made:

1. In the caption "(Cleveland, Ohio, to Albany, N.Y.)" is deleted and "(Cleveland, Ohio, to Cambridge, N.Y.)" is substituted therefor.

2. In the text "to the Albany, N.Y., VOR." is deleted and "Albany, N.Y., VOR; to the Cambridge, N.Y., VOR." is substituted therefor.

This amendment shall become effective 0001 e.s.t., January 11, 1962.

Issued in Washington, D.C. on November 22, 1961.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 61-11301; Filed, Nov. 29, 1961;
8:45 a.m.]

[Airspace Docket No. 60-LA-114]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Alteration of Control Area Extensions

On July 22, 1961, a notice of proposed rule making was published in the FEDERAL REGISTER (26 F.R. 6603) stating that the Federal Aviation Agency proposed to alter the Los Angeles, Calif., control area extension (§ 601.1316) and the Long Beach, Calif., control area extension (§ 601.1177).

Since this action involves the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, the following actions are taken:

1. Section 601.1316 (14 CFR 601.1316) Control area extension (Los Angeles, Calif.) is amended to read:

§ 601.1316 Control area extension (Los Angeles, Calif.).

That airspace within 5 miles either side of the Los Angeles VOR 251° radial extending from the VOR to the Oakland Oceanic Control Area boundary and including the additional area between lines diverging at an angle of 5° from the centerline extending westward from the Los Angeles VOR; excluding the airspace below 2,000 feet MSL between the continental United States and the eastern boundary of the Point Mugu, Calif., Warning Area (W-289) and excluding the airspace below 5,000 feet MSL within Warning Area (W-289).

2. Section 601.1177 (14 CFR 601.1177) Control area extension (Long Beach, Calif.) is amended to read:

§ 601.1177 Control area extension (Santa Catalina, Calif.).

That airspace bounded by a line beginning at latitude 33°25'50" N., longitude 118°28'50" W.,
thence to latitude 33°19'00" N., longitude 118°21'45" W.,
thence to latitude 32°44'30" N., longitude 119°07'00" W.,
thence to latitude 31°41'00" N., longitude 120°15'00" W.,
thence to latitude 31°18'40" N., longitude 121°11'30" W.,
thence to latitude 31°54'00" N., longitude 121°34'30" W.,
thence to latitude 32°10'45" N., longitude 120°16'15" W.,
thence to latitude 32°52'15" N., longitude 119°12'30" W.,
thence to the point of beginning, excluding the airspace below 5,000 feet MSL.

These amendments shall become effective 0001 e.s.t. January 11, 1962.

(Sec. 307(a) and 1110, 72 Stat. 749 and 800; 49 U.S.C. 1348 and 1510, and Executive Order No. 10854, 24 F.R. 9565)

Issued in Washington, D.C., on November 24, 1961.

D. D. THOMAS,
Director, Air Traffic Service.

[F.R. Doc. 61-11300; Filed, Nov. 29, 1961;
8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 8427 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Western European Import Co. et al.

Subpart—Advertising falsely or misleadingly: § 13.235 *Source or origin*: § 13.235-60 *Place*: § 13.235-60(c) *Foreign, in general*. Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception*. Subpart—Misbranding or mislabeling: § 13.1325 *Source or origin*: § 13.1325-70 *Place*: § 13.1325-70(c) *Foreign, in general*.

(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, Benno Karpus et al. trading as Western European Import Co., New York, N.Y., Docket 8427, Sept. 15, 1961]

In the Matter of Benno Karpus and Aron Weintraub, Individually and as Co-partners Trading as Western European Import Co.

Consent order requiring New York City distributors of porcelain figurines to cease representing falsely that figurines actually made in West Germany came from Dresden in East Germany, by means of such markings as "Dresden Art" and "Dresden Dec." and advertising plaques furnished retailers bearing the words "Dresden Figures", and by use on the figurines and plaques of a hallmark closely resembling that of porcelain manufacturers of Dresden.

The order to cease and desist, including also the provision requiring report of compliance therewith, is as follows:

It is ordered, That respondents Benno Karpus and Aron Weintraub, individually and trading under the name of Western European Import Co., or under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of porcelain figurines and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Dresden", either independently or in connection or conjunction with any other words or symbols, to designate or describe figurines or other china or porcelain ware which was not made or manufactured in Dresden, Germany.

2. Misrepresenting in any manner, directly or indirectly, the place of manufacture or origin of products sold by them.

It is further ordered, That the respondents herein 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 this order.

Issued: September 15, 1961.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 61-11309; Filed, Nov. 29, 1961;
8:47 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 200—ORGANIZATION; CON- DUCT AND ETHICS; AND INFOR- MATION AND REQUESTS

Subpart E—Regulation Regarding Equal Employment Opportunity

Pursuant to Executive Order 10925 of March 6, 1961, and the authority conferred upon the Securities and Exchange Commission by the various statutes administered by it, Part 200 of Chapter II, Title 17, is amended by adding a new Subpart E, reading as follows:

Sec.	
200.90	General statement.
200.91	Definitions.
200.92	Designation of Employment Policy Officer.
200.93	Duties of the Employment Policy Officer.
200.94	Who may file.
200.95	Where to file.
200.96	Processing of complaints; time limitation.
200.97	Investigation.
200.98	Negotiation and settlement.
200.99	Opportunity for hearing and review.
200.100	Right to counsel.
200.101	Final decision.
200.102	Review of clauses by Executive Vice Chairman.
200.103	Report of disposition of complaints.
200.104	Dissemination of information.

AUTHORITY: §§ 200.90 to 200.104 issued under secs. 19(a), 23(a), 48 Stat. 85, 901, as amended, sec. 20(a), 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38(a), 211(a), 54 Stat. 841, 855, as amended, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11.

§ 200.90 General statement.

The purpose of this subpart is to implement Part II of Executive Order 10925, which reaffirms the policy expressed in Executive Order No. 10590 of January 18, 1955, with respect to the exclusion and prohibition of discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin. This subpart applies to all positions in the Securities and Exchange Commission, whether or not in competitive service and supersedes the "Regulations and Procedures under Executive Order 10590" adopted by the Commission on August 17, 1955.

§ 200.91 Definitions.

(a) "Commission" means the Securities and Exchange Commission.

(b) "Committee" means the President's Committee on Equal Employment Opportunity.

(c) "Chairman" means the Chairman of the Securities and Exchange Commission.

(d) "Executive Vice Chairman" means the Executive Vice Chairman of the Committee.

(e) "Order" means Executive Order 10925 of March 6, 1961.

§ 200.92 Designation of Employment Policy Officer.

The Employment Policy Officer of the Commission shall be designated by the Chairman. The Employment Policy Officer may designate, when appropriate, Deputy Employment Policy Officers for each of the regional offices of the Commission to assist the Employment Policy Officer. The positions of the Employment Policy Officer and Deputy Employment Policy Officer shall be established outside the office handling the personnel matters of the Commission unless prior approval is received from the Executive Vice Chairman. In the discharge of his functions, the Employment Policy Officer shall be under the immediate supervision of the Chairman. The name of each Employment Policy Officer, his official title, address and telephone number, and any changes made in his designation, shall be furnished to the Executive Vice Chairman.

§ 200.93 Duties of the Employment Policy Officer.

The Employment Policy Officer shall:

(a) Advise the Chairman with respect to the preparation of regulations, reports, and other matters dealing with the exclusion and prohibition of discrimination under the order.

(b) Process complaints of alleged discrimination in personnel matters within the Commission, and make recommendations to approve administrative officials for such corrective measures as he may deem necessary.

(c) Appraise the personnel operations of the department or agency at regular intervals to assure their continuing conformity to the policy expressed in the order of excluding and prohibiting discrimination.

§ 200.94 Who may file.

Any aggrieved employee of the Commission or qualified applicant for employment in the Commission who believes he has been discriminated against because of race, creed, color or national origin may file a written, signed complaint within 90 days from the date of the alleged discrimination, unless such time is extended by the Employment Policy Officer or the Executive Vice Chairman for good cause shown. The complaint shall state specifically the action or personnel matter complained of and shall contain a full factual statement to support the allegations made.

§ 200.95 Where to file.

Complaints may be filed with the Employment Policy Officer or with the Committee. Those filed with the Committee may be referred to the appropriate Employment Policy Officer for considera-

tion, or may be processed by the Committee pursuant to 5 CFR 401.22 (26 F.R. 6580). Where complaints are filed with the Employment Policy Officer or Deputy Employment Policy Officer, he shall transmit a copy of the complaint to the Executive Vice Chairman.

§ 200.96 Processing of complaints; time limitation.

Within 30 days from receipt of a complaint by the Employment Policy Officer or within such additional time as may be allowed by the Executive Vice Chairman for good cause shown, the Employment Policy Officer shall process the complaint and submit to the Executive Vice Chairman a report on disposition of the complaint. Where the complainant requests a hearing, the report on the disposition of the complaint may be submitted to the Executive Vice Chairman within 60 days after the receipt thereof.

§ 200.97 Investigation.

The Employment Policy Officer shall institute a prompt investigation of each complaint, and shall be responsible for developing a complete case record, including an adequate transcript or agreed summary of any hearing, sufficient to dispose of all relevant issues. Whenever necessary or appropriate for a full development of the case, the investigation shall include an appraisal of employment practices in the organizational segment or unit in which the alleged discrimination occurred. In those instances where no discrimination is found, the complainant shall be advised of such finding, of the results of the investigation, and of his right to secure a review by the Executive Vice Chairman.

§ 200.98 Negotiation and settlement.

After completion of the investigation, if the Employment Policy Officer believes there is sufficient justification for the complaint to support an effort to dispose of the matter informally, an attempt should be made to resolve the matter by informal means.

§ 200.99 Opportunity for hearing and review.

(a) In any case not disposed of by informal means, the complainant shall be afforded an opportunity for an oral hearing before the Employment Policy Officer or someone designated by him, at a convenient time and place. At such hearing, the Commission shall produce any witnesses in its employ, upon a showing satisfactory to the hearing officer of reasonable necessity therefor, and the rights of confrontation and of cross-examination (insofar as may be necessary for a development of the facts), shall be preserved. Any requests for the attendance of necessary witnesses in the Commission's employ shall be made in writing of the complainant at least 10 days prior to the date of the hearing.

(b) The complainant shall have the right to inspect any investigative report except where the Executive Vice Chairman determines that any report or portions thereof shall not be disclosed for reasons of national security. The hearing shall be informal and the hearing officer shall make his proposed findings

and recommend conclusions upon the basis of the record before him. Where a complainant fails to appear without good cause shown or fails within 60 days to furnish requested information or to otherwise process his complaint, such case may be closed. The Employment Policy Officer may refer cases to the Executive Vice Chairman for study and recommendation after the Employment Policy Officer has formulated his findings and recommendations and prior to any decision by the Employment Policy Officer.

§ 200.100 Right to counsel.

Parties to proceedings under this regulation shall have the right to be accompanied, represented and advised by counsel, or by other qualified representative.

§ 200.101 Final decision.

The Employment Policy Officer shall make the final decision in the disposition of the case. Where the Employment Policy Officer has referred the case to the Executive Vice Chairman for review and advisory opinion, such final decision may be made only after receipt of the recommendations of the Executive Vice Chairman. Further, such final decisions shall be reconsidered whenever reconsideration is recommended or ordered by the Executive Vice Chairman.

§ 200.102 Review of cases by Executive Vice Chairman.

The complainant may request the Employment Policy Officer to forward his case to the Executive Vice Chairman for review. Such request must be made by the complainant within 30 days of the date of final action by the Employment Policy Officer, unless the Executive Vice Chairman shall waive such time limitation upon good cause shown.

§ 200.103 Report of disposition of complaints.

The Employment Policy Officer shall submit to the Executive Vice Chairman a report of the final disposition of each complaint processed by him. The report shall contain the following:

- (a) A copy of the complete case record, if requested by the Executive Vice Chairman.
- (b) A summary of the complete case record, which shall include the following:
 - (1) The name and address of the complainant.
 - (2) The date on which the complaint was filed with or referred to the Employment Policy Officer.
 - (3) A summary of the complaint indicating the specific type or types of discrimination alleged.
 - (4) A summary of the results of any appraisal of employment practices and the significant facts disclosed by the investigation and any hearing.
 - (5) A statement describing disposition of the complaint. If the complaint was withdrawn, the reason for withdrawal should be included.
 - (6) The date of disposition of the complaint.

§ 200.104 Dissemination of information.

A copy of this subpart shall be posted on all employee bulletin boards and all bulletin boards which are used to announce Federal examinations and job opportunities in the Commission; where bulletin boards are not used, the regulations will be made available to all personnel. Similar publication shall be made of the name and address of the Employment Policy Officer and that of any Deputy Employment Policy Officers in the regional offices serviced by them. Information concerning the Commission's non-discrimination policy and procedures shall be published at least annually.

The Commission finds that the foregoing action relates to agency organization, procedure or practice and that compliance with sections 4(a), (b), and (c) of the Administrative Procedure Act is unnecessary. Such action shall become effective immediately.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

NOVEMBER 20, 1961.

[F.R. Doc. 61-11315; F.l.ed, Nov. 29, 1961;
8:48 a.m.]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER B—CLAIMS AND ACCOUNTS

PART 536—CLAIMS AGAINST THE UNITED STATES

Military Payment Certificates

Sections 536.79 through 536.84 are revoked and the following substituted therefor:

§ 536.79 Definitions.

(a) *United States dollar instruments.* For the purpose of §§ 536.79 to 536.87, United States dollar instruments include the following:

- (1) United States Treasury checks (standard dollar checks) drawn on the Treasurer of the United States by authorized finance and accounting officers.
- (2) Travelers' checks issued by the American Express Company, Bank of America, National Trust and Savings Associations, Mellon National Bank and Trust Company, First National City Bank of New York, Thomas Cook and Son (Bankers) Ltd., and the First National Bank of Chicago, when expressed in United States dollars.
- (3) United States military disbursing officers' payment orders.
- (4) American Express Company money orders, when expressed in United States dollars, and United States postal money orders.
- (5) Telegraphic money orders, when expressed in United States dollars.
- (b) *Military payment certificates.* The military payment certificate is an instrument, issued in denominations of 5¢, 10¢, 25¢, 50¢, \$1, \$5, and \$10, used as the official medium of exchange in all

establishments in the areas listed in § 536.80(a).

(c) *Authorized personnel.* For the purpose of §§ 536.79 to 536.87, authorized personnel include:

(1) Military personnel of the United States Government including Reserve members on active duty.

(2) Members of the Reserve components performing active duty for training, or inactive duty training and not included in subparagraphs (3) through (9) of this paragraph.

(3) Civilians, who are citizens of the United States, employed directly or indirectly through contractors, by the Department of Defense.

(4) Civilians, who are citizens of the United States, employed directly by agencies of the United States Government, other than the Department of Defense, when authorized by the appropriate oversea commander.

(5) Dependents or personnel included in subparagraphs (1) through (4) of this paragraph.

(6) Civilians, other than citizens of the country whose currency is legal tender in the area, directly employed by the Department of Defense, when authorized by the appropriate oversea commander.

(7) Civilians, other than citizens of the country whose currency is legal tender in the area, who are employed by quasi-official organizations in or under the Department of Defense and working for the benefit of members of the Armed Forces of the United States, when authorized by appropriate oversea commander. Examples of quasi-official organizations are the Army and Air Force Exchange Service and its exchanges; USO; American Red Cross; unit clubs; enlisted personnel and officers' clubs and messes; Central Welfare Fund of the major oversea command, etc.

(8) Personnel attached to the headquarters of any United States military or naval unit when specifically authorized by the oversea commander. Such authorization will be based on the oversea commander's determination that such personnel can best perform their mission by having access to Department of Defense facilities.

(9) Retired military personnel who are citizens of the United States.

(10) Individuals not falling within the categories of personnel described in subparagraphs (1) through (9) of this paragraph, may be considered "authorized personnel" if they qualify for logistic support under the policy contained in paragraph 4, AR 700-32, which provides: "Commanders of oversea areas are authorized to furnish logistic support on a reimbursable basis to the eligible individuals and agencies covered by these regulations in accordance with principles specified herein. The decision as to whether an agency or individual is eligible to receive logistic support under the policies and principles of these regulations rests with the commander of the oversea command. Commanders of unified commands in oversea areas may issue such additional implementing instructions as are necessary to assure

uniform application of the principles and policy of these regulations within their commands."

(d) *Oversea commander.* The term "oversea commander" means the commanding general of a major oversea command.

§ 536.80 Use of military payment certificates.

(a) *Areas in which used.* Military payment certificates are to be used only in the Department of Defense by authorized personnel in the following areas:

Cyprus.
Iceland.
Japan and outlying islands.
Korea.
Libya.
Morocco.
Philippine Islands.

(b) *Disbursement of military payment certificates.* In the areas listed in paragraph (a) of this section, military payment certificates will be disbursed to authorized personnel for all items of pay and allowances and for all other authorized payments to individuals in and under the Department of Defense. Where applicable the limitations stated in § 536.82 will be observed.

(c) *Facilities in which used.* Military payment certificates are the only authorized medium of exchange in the following facilities:

(1) Army, Navy, and Air Force sales and services installations and activities.

(2) Theaters and other entertainment facilities operated by Department of Defense.

(3) Officers' and enlisted personnel messes and clubs, including American Red Cross installations.

(4) Army, Navy, and Air Force postal installations for purchase of postal money orders and stamps, and cashing of postal money orders.

(5) Contributions to all authorized charitable appeals, church collections, and chaplain's funds when remittance is to be forwarded to the United States through Department of Defense channels.

(6) Payments to all travel agencies, radio, cable, telegraph, and telephone companies, and all other similar facilities when remittance is to be forwarded to the United States through Department of Defense channels.

(7) All other official agencies, quasi-official and private agencies of or working in behalf of United States Armed Forces providing goods, services, and facilities to members of the United States Armed Forces.

§ 536.81 Restrictions on possession and use.

(a) *Possession or use prohibited.* Possession or use of military payment certificates is prohibited unless acquired in accordance with § 536.79-536.87 and such additional regulations as may be issued by the oversea commander concerned.

(b) *Not to violate directives.* Acquisition, possession, and use of military payment certificates incident to normal legitimate transactions within the Department of Defense must not violate Department of the Army or major oversea command directives or the Uniform Code of Military Justice.

(c) *Acceptance, transfer, or exchange.* Under no circumstances will military payment certificates be accepted from, transferred to, or exchanged for persons other than authorized personnel. Military payment certificates will not be accepted or exchanged after the date specified by the Secretary of the Army as the last day for their acceptance or exchange.

(d) *Transmission through mail.* Individuals are prohibited from transmitting military payment certificates through the mails to any areas other than those specified in § 536.80(a). Military payment certificates may be transmitted to authorized personnel or official agencies by mail within or between the areas specified in § 536.80(a).

§ 536.82 Limitation on amounts.

(a) *Civilian and attached personnel.* The disbursement of military payment certificates to civilian and attached personnel referred to in § 536.79(c) is limited to the amount determined by the oversea commander to be necessary.

(b) *Reserve component members.* The disbursement of military payment certificates to reserve component members referred to in § 536.79(c) is limited to \$50 per quarterly period for each individual. There is no limitation on the number of purchases which may be made by an individual in any quarterly period, except that the total value of military payment certificates issued during the period may not exceed \$50.

§ 536.83 Convertibility of military payment certificates.

(a) *For authorized personnel.* Finance and accounting officers and their agents, subject to prescribed limitations, are authorized to exchange dollar instruments for military payment certificates, or military payment certificates for dollar instruments for persons authorized to possess such certificates.

(b) *Transactions with disbursing officers of other services.* Dollar instruments may be exchanged for military payment certificates or military payment certificates for dollar instruments in transactions with Navy and Air Force disbursing officers and their agents. Oversea commanders may specifically authorize such transactions with other disbursing officers of the United States Government and their agents.

§ 536.84 Conditions under which military payment certificates may be converted.

Authorized personnel may exchange military payment certificates, in amounts legitimately in their possession for United States currency, coin, or dollar

instruments, including United States Treasury checks as provided in pertinent Army regulations, under the following conditions:

(a) Upon departure for the United States.

(b) When traveling under competent orders to areas where military payment certificates are not designated for use.

(c) When traveling under competent orders to military payment certificate areas where finance and accounting officers, class B agent officers, including military attaché agent officers, or exchange facilities are not readily available to the traveler.

§ 536.85 Conversion of military payment certificates outside designated areas.

The provisions of § 536.84 will not be construed as authorizing finance and accounting officers or their agents in areas outside those listed in § 536.80 to convert military payment certificates for authorized personnel returning from military payment certificate areas. Such exchange must be made prior to departure from the military payment certificate area.

§ 536.86 Conversion of invalidated military payment certificates.

(a) *When and how converted.* Conversion of invalidated series of military payment certificates will be effected within the time limits and under conditions specified by the Comptroller of the Army.

(b) *When found in effects of deceased personnel.* Invalidated series of military payment certificates in amounts not in excess of \$500, found in the effects of deceased personnel or personnel in a missing status, will be converted into a Treasury check. Such military payment certificates will be converted only if date of death or entry into missing status was prior to the date the series of military payment certificates was withdrawn from circulation. The Treasury check will be disposed of in accordance with regulations governing disposition of effects of deceased or missing personnel. Amounts in excess of \$500 will be forwarded by the summary court officer to the Finance Center, U.S. Army for decision regarding exchange of such certificates.

(c) *Disposition when received with claim.* Under no circumstances will invalidated series of military payment certificates received with claims for conversion be taken up in the accounts of the finance and accounting officer. Such certificates will be held in safekeeping until decision is made. If the claim is disapproved, the certificates will be returned to the claimant. In the event these certificates are again received by the finance and accounting officer as undeliverable and reasonable efforts fail to locate the claimant, the certificates will be held for a period of 6 months after which time the proceeds of the certificates will be deposited in the Treasury

to the General Fund (Misc.) Receipt Account 211060 "Forfeitures of unclaimed money and property."

§ 536.87 Confiscation of military payment certificates.

(a) *Unauthorized persons.* Military payment certificates found in the possession of unauthorized persons subject to the police power of the United States will be confiscated. The dollar proceeds will be deposited in the Treasury to the General Fund (Misc.) Subsequent claims for recovery of these funds will be forwarded through the Finance Center, U.S. Army to the General Accounting Office, Washington 25, D.C., for adjudication.

(b) *Authorized persons.* Military payment certificates confiscated from authorized persons, who are suspected of illegal dealings in military payment certificates, will be held until there is a finding, either by court-martial or as the result of administrative proceedings, as to whether or not the impounded certificates were obtained in a manner prohibited by §§ 536.79 to 536.87 or in a manner prohibited by local regulations. Administrative proceedings will afford the individual a full and complete opportunity to disprove the allegation of unlawful acquisition. The dollar proceeds of military payment certificates found to have been illegally acquired will be deposited as in paragraph (a) of this section. If it is adjudged that the military payment certificates were legally acquired, they will be returned to the individual from whom they were confiscated. In those cases where the returned certificates were invalidated, as a result of a conversion program, on or subsequent to the date of seizure, the individual will submit a claim for conversion of the invalidated certificates, with complete information, through appropriate channels. A copy of the court-martial findings, or administrative proceedings, whichever is appropriate, will be forwarded with these claims. Adjudication and final determination on such claims will be made by the Finance Center, U.S. Army, under the authority delegated by the Comptroller of the Army, or by the headquarters of the oversea command when so authorized by the Comptroller of the Army.

[Chap. 12, AR 37-103] (Sec. 3, 58 Stat. 321, as amended; 31 U.S.C. 492c)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 61-11293; Filed, Nov. 29, 1961; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Animal Feed and Animal-Feed Supplements

RONNEL

Correction

In F.R. Doc. 61-11212, appearing at page 11210 of the issue for Tuesday, November 28, 1961, the word "remix" in the introductory text of § 121.209(e) should read "premix".

SUBCHAPTER D—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES: DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Placement, Conspicuousness, Contrast

Correction

In F.R. Doc. 61-11215, appearing at page 11213 of the issue for Tuesday, November 28, 1961, the word "crossbone" in § 191.101(b) should read "crossbones".

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 14272; FCC 61-1401]

PART 3—RADIO BROADCAST SERVICES

Table of Assignments

In the matter of amendment of § 3.606, Table of Assignments, Television Broadcast Stations (Bay City, Michigan), Docket No. 14272 (RM-271).

1. The Commission has before it for consideration its notice of proposed rule making released September 15, 1961 proposing that Channel 19, now assigned to Bay City, Michigan, be reserved for non-commercial educational use in that community. Channel 73 is presently reserved for education in this community. The petitioner prefers Channel 19 for technological reasons.

2. The petition of Delta College noted that a study has been made of the po-

tential educational utilization of a television station in the Bay City-Saginaw-Midland area, and that all of the educational and cultural institutions in the area were of the view that there was need for a new television station reserved exclusively for educational use. The public and parochial schools, the colleges and universities, an advisory committee of business and industrial leaders, and an Arts Council formed of nine art and cultural institutions have indicated an intention to program on the proposed station.

3. No comments or oppositions were filed in the rule making. On the basis of the needs recited in support of the proposal, the Commission finds that adoption of the proposal is in the public interest and that, concomitantly, the present educational reservation on Channel 73 at Bay City may be deleted.

4. Authority for the amendment adopted herein is contained in sections 4 (i) and (j), 303 and 307(b) of the Communications Act of 1934, as amended.

5. In view of the foregoing: *It is ordered*, That effective January 2, 1962, the table of assignments contained in § 3.606 of the Commission's rules and regulations is amended, with respect to the community named, to read as follows:

<i>City</i>	<i>Channel No.</i>
Bay City, Mich.....	5-, *19+, 68-, 73+

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 303, 307, 48 Stat. 1082, 1083; 47 U.S.C. 303, 307)

Adopted: November 21, 1961.

Released: November 27, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11345; Filed, Nov. 29, 1961; 8:53 a.m.]

[Docket No. 13952; FCC 61-1323]

PART 14—PUBLIC FIXED STATIONS AND STATIONS OF THE MARITIME SERVICES IN ALASKA

Frequencies for Ship-Shore and Ship-to-Ship Communication by Telegraphy to Telephony in All Zones

Correction

In F.R. Doc. 61-11009, appearing at page 10918 of the issue for Wednesday, November 22, 1961, in § 14.259(a) (3) (ii), the frequency reading "5390.2" should read "4390.2".

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and
Conservation Service

[7 CFR Part 998]

[Docket No. AO 259-A5]

MILK IN CORPUS CHRISTI, TEXAS, MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Excep- tions on Proposed Amendments to Tentative Marketing Agreement and to 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 Assistant Secretary, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Corpus Christi, Texas, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, 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 Edinburg, Texas, on April 21, 1961, pursuant to notice thereof which was issued March 28, 1961 (26 F.R. 2756).

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

1. The classification and accounting for dietary products and other fortified fluid milk products.
2. Classification of sour cream and related products.
3. Pooling requirements for fluid milk plants also meeting the pooling requirements of another Federal order.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Classification and accounting for dietary products and other fortified fluid milk products.* Fortified fluid milk products, including dietary products, should be classified as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content, excluding the dry weight of any nonmilk additives such as

flavoring, etc. The skim milk equivalent of the nonfat milk solids not classified as Class I should be considered a Class II disposition.

The existing order provisions provide for full skim milk equivalent accounting. Hence, when nonfat milk solids in the form of nonfat dry milk or condensed skim milk are added to a fluid milk product to increase the nonfat milk solids content, the skim milk equivalent of the total nonfat milk solids in the product is classified as Class I. Since the order provides for individual-handler pooling there is no provision for any compensatory payments on other source milk. Producer milk is given priority of assignment in Class I and to the extent that producer receipts are available in the plant, producers are credited a Class I utilization on the full skim milk equivalent of other source nonfat milk solids received in concentrated form and used in fortification or reconstitution. Where nonmilk products such as salt, sugar, flavoring, etc., are used in making any milk product, the weight of such additives is deducted before reconciliation of the pounds of skim and butterfat to be classified.

Handlers proposed that fluid milk dietary foods be classified as Class II in lieu of the present Class I classification and that the skim milk equivalent accounting for nonfat milk solids used in fortification be discontinued. It was their position that the product cost resulting from the present Class I classification of dietary fluid milk products places them at a competitive disadvantage with similar products in dry form or in hermetically sealed containers made from non-Grade A milk and milk products and distributed through grocery stores, drug stores, food establishments and similar outlets. They suggested that a Class II classification and pricing would permit more competitive resale pricing and hence create a greater demand for their product. This they contended would serve to increase over-all returns to producers because less milk would be disposed of necessarily in Class II-A (Cheddar cheese). They further contended that a Class I classification and pricing on the skim milk equivalent of nonfat milk solids used in the fortification of Class I products is unrealistic and unduly increases handlers' cost.

Producers, on the other hand, opposed any change in the present accounting procedure. It was their position that full skim milk equivalent accounting is essential to protect the integrity of the classification scheme under the Federal order and that unless nonfat milk solids used in fortification are accounted for on a skim milk equivalent basis in Class I, handlers have opportunity to displace producer milk in Class I with lower priced other source milk.

A great deal of the testimony on the record was offered to substantiate that

dietary milk products were, or were not, required to be made from locally approved milk under the various health ordinances in effect in the marketing area. Regardless of the intent of the ordinances it is apparent that the local health authorities are not so interpreting their ordinances. However, this is of little consequence since handlers are not permitted to bring fluid non-Grade A milk or skim milk into their fluid milk plants. Under any circumstances it is clear that, because of the perishability of the finished dietary product, handlers use only milk of the highest quality and hence they require and rely on local producers to furnish their full fluid milk requirements. Therefore, it is appropriate and necessary that the Class I classification be retained.

Fortification of fluid milk products customarily is accomplished by the addition of concentrated nonfat milk solids to fluid milk or skim milk to yield a finished product of higher nonfat milk solids content than that of an equivalent amount of whole (producer) milk. Reconstituted products, on the other hand, involve the process of "floating" concentrated milk solids in water to yield a weight of product approximately equal to the weight of milk from which the concentrated product was first made by the removal of water.

Nonfat dry milk and condensed milk or skim milk are ordinarily derived from unpriced milk or milk which has been priced as surplus under a Federal order. These products are not necessarily processed from producer milk and may be made from ungraded milk. An economic incentive exists for handlers to substitute, where possible, reconstituted fluid milk products for fluid milk products processed from current receipts of producer milk. Since such substitution would displace an equivalent amount of producer milk in Class I, the application of skim milk equivalent accounting in this circumstance is economically sound and is necessary to maintain orderly marketing.

The same economic incentive does not exist, however, with respect to the use of nonfat dry milk or condensed skim milk to fortify a fluid milk product. If nonfat milk solids are to be derived from producer milk, the skim milk must first be processed into usable form; i.e., nonfat dry milk or condensed skim milk. Such products processed from producer milk have no greater value for fortification purposes than similar products purchased on the open market. Such products are used in fortification to increase the palatability of, and hence the salability of, the finished product. Fortification only slightly increases the volume of the product and under no circumstances can it be concluded that the added solids displace producer milk in Class I beyond the minor increase in volume which results.

When the skim milk equivalent provision is applied to fortified milk products, it inflates significantly the utilization and disposition of Class I milk. The inflation in the case of dietary food products results in a Class I classification of about two and one-half times the actual volume. For reasons previously stated it is neither necessary nor appropriate that handlers continue to be required to account and pay for this inflated volume in Class I. Nevertheless, it is practical and administratively necessary to maintain full skim milk equivalent accounting. These conclusions can be reconciled by providing that fortified fluid milk products shall be classified as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content, excluding the dry weight of any nonmilk additive such as flavoring, sugar, etc. The skim milk equivalent of the nonfat milk solids not classified in Class I should be considered as Class II disposition.

No change was proposed in the accounting procedure to be followed in cases where flavoring and other nonmilk additives are used in processing unfortified products. The dry weight of such additives should be deducted in determining the amount of skim milk and butterfat to be accounted for. This is generally consistent with the procedure now employed and the conclusions hereinbefore set forth relative to the accounting procedure to be employed for fortified products.

2. *Classification of sour cream and related products.* The classification provisions should be revised to provide, in the case of sour cream, that only sour cream and those sour cream products which are disposed of under a Grade A label shall be classified as Class I. Such products disposed of without a Grade A label should be classified as Class II.

Handlers proposed revision of the classification provisions to provide a Class II classification for all sour cream and sour cream derivatives such as sour cream dressings, dips, toppings, etc. They pointed out that they compete for sales of such products with handlers from an adjacent Federal order market where such products are classified as Class II and also such products processed in distant unregulated markets sold through grocery and dairy stores throughout the marketing area.

Producers opposed any change from the present Class I classification, pointing out that the applicable health regulations in the local market require that sour cream carry a Grade A label and that while sour cream products are not required to be so labeled, nevertheless, regulated handlers use only local Grade A producer milk in processing such products.

The products required to be made from locally approved milk supplies are classified as Class I. A Class I classification and pricing for such products is essential to assure sufficient returns to producers to encourage the maintenance of an adequate milk supply for the market. However, it is not necessary that sufficient producer milk be available to supply the market's requirements for sour

cream products not required to be made from approved milk. Such requirements, under normal circumstances, can be supplied more economically through manufactured dairy products procured on the open market. Nevertheless, to the extent that the reserve supply of the local fluid market is available for disposition in such products its economical utilization should be encouraged.

Local handlers currently rely on local producers to furnish their skim milk and butterfat requirements for sour cream products, primarily to assure a quality product. Handler witnesses stated that they had sought other sources of supply but to date had found no assured supply of suitable quality. Notwithstanding, products derived from sour cream and originating in distant unregulated markets are now being distributed generally in the marketing area in direct competition with locally made products. In addition, regulated handlers under the San Antonio order, where sour cream products are classified as Class II, are disposing of such products in the local market. None of these products is marketed under a Grade A label, however.

It is likely that local handlers are operating at a competitive disadvantage in the distribution of sour cream products, by virtue of their higher product costs under a Class I classification. Under the circumstances, it is desirable that the classification of sour cream products not distributed under a Grade A label be changed to Class II. However, if handlers sell their locally made products as sour cream or under a Grade A label to comply with local health regulations such products should continue to be classified in Class I.

3. *Pooling requirements for fluid milk plants also meeting the pooling requirements of another Federal order.* The present order provisions should be revised to exempt from regulation, except for reporting and verification, any plant meeting the pooling requirements of both this order and another Federal order and which retains pooling status under such other Federal order.

Under the present order provisions a distributing plant which disposes of more than three percent of its receipts, or an average of 1,000 pounds per day (whichever is less), as Class I milk in the marketing area during the month is subject to full regulation, unless a greater volume of Class I milk is disposed of on routes in another marketing area and the plant would be fully regulated under such other order. A supply plant is regulated in any month of February through July in which milk, skim milk or cream is shipped to a regulated distributing plant and in any month of August through January in which such shipments exceed 5,000 pounds per day. No provision is made for exempting a supply plant which is regulated under another order.

A regulated handler under the North Texas order proposed that the order be amended to preclude regulation under this order of a plant meeting the pooling requirements of both this order and another Federal order unless such plant's

sales in this market exceeded its sales in the other market over an extended period of time. He contended that with recent technological improvements in processing and distribution, milk now moves great distances from plant to consumer. It is possible that a plant could in a short run period increase its sales in the local market to such an extent as to bring it under full regulation under the order and then by virtue of the loss of a few accounts or by an increase in accounts in the other market change back and forth between orders on a month-to-month basis. This, he contended, would not be in the best interest of either the handler or producers involved.

The proposal was opposed by both regulated handlers and by producers. They pointed out that proponent had no sales in the local market and the nature of the market was such that there was little likelihood of the situation referred to occurring. They further pointed out that regulation of a plant under the Corpus Christi order, with individual-handler pooling, when such plant did more business in another Federal order market could under certain circumstances provide the plant a significant competitive advantage.

A similar proposal was considered at recent hearings in each of the other Texas markets. It is recognized that the shifting of distributing plants back and forth on a month-to-month basis between two different regulations could have a serious detrimental effect on the stability of the market. However, as opponents point out there is no apparent situation presently existing in the market which might produce this result. San Antonio is the nearest federally regulated market and it is significantly larger than the Corpus Christi market in both producer receipts and Class I sales. Under the circumstances there appears to be no need for the proposed provision at this time. However, recognition should be given to the fact that the San Antonio order presently provides that a plant meeting the pooling requirements of that order and which was regulated in the most recent month under that order shall continue to be so regulated until the third month in which greater sales are made in another Federal order market.

As previously indicated, there is no reason at this time to expect that a plant regulated under the San Antonio order, or any other order under a similar provision might dispose of a greater proportion of its Class I milk in the Corpus Christi marketing area. Nevertheless, it is desirable that provision be made to exempt such a plant from regulation under this order, in such event, since it would be neither necessary nor appropriate to subject a plant to full regulation under two orders. Since Federal orders generally provide that distributing plants meeting the pooling requirements of more than one order shall be regulated under that order covering the marketing area in which the greater volume of Class I milk is disposed of, modification of the order to exempt any plant regulated under another Federal order would have significance only under

circumstances in which a plant retained pooling status under another order for a temporary period under a provision intended to give the operator reasonable time to make sales adjustments as between markets and thus avoid a change from one regulation to another if such change was not contemplated nor intended. Accordingly, this revision should be made.

As previously indicated, the present order provides no direction as to where a supply plant performing under two orders should be regulated. This deficiency can be corrected by providing that any plant meeting the requirements for regulation both under this order and another Federal order shall be pooled under this order unless greater qualifying shipments are made during the month to plants regulated under another order or the plant retains automatic pooling status under such other order by virtue of performance in a previous period. During the flush production months, when milk of supply plants is least likely to be needed for fluid uses, many Federal orders provide automatic pooling status for supply plants which have been closely associated with the market in previous short production months by virtue of substantial and regular shipments to the market. Requiring a supply plant with automatic pooling status under another order to be regulated under this order during the flush production months on the basis of casual shipments could be expected to have an adverse effect on returns to the dairy farmers delivering to such plant since their normal market would likely be operating under a marketwide pooling arrangement and regulation under an individual-handler pool (as provided in this order) likely would deny them any significant share of the market's Class I sales. It would therefore be more appropriate to permit such a plant to retain pooling status during the flush production months in the market with which it had an established association and automatic pooling status.

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

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

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

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the 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 Corpus Christi, Texas, 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:

§ 998.41 [Amendment]

1. Delete paragraph (a) of § 998.41 and substitute therefor the following:

(a) **Class I milk.** Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of in fluid form as milk, skim milk, buttermilk, flavored milk drinks, cream, cultured sour cream and sour cream products labeled Grade A, and any mixture of cream and milk or skim milk (other than frozen storage cream, aerated cream products, eggnog, ice cream, ice cream mix or other frozen mixes, evaporated or condensed milk, and milk products contained in hermetically sealed containers): *Provided*, That when any such product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content, and (2) not accounted for as Class II milk or Class II-A milk.

2. Renumber subparagraphs (4) and (5) of § 998.41(b) as subparagraphs (5) and (6), respectively, and add a new subparagraph (4) as follows:

(4) Skim milk contained in any fortified product designated in paragraph (a)(1) of this section in excess of the pounds of skim milk in such product classified as Class I pursuant to such subparagraph;

3. Delete § 998.61 and substitute therefor the following:

§ 998.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraphs (a), (b) or (c) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such 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.

(a) A fluid milk plant pursuant to § 998.7(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes (other than to a distributing plant(s)) in the Corpus Christi, Texas, marketing area.

(b) A fluid milk plant pursuant to § 998.7(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes (other than to a distributing plant(s)) in the Corpus Christi, Texas, marketing area than is disposed of on routes in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A fluid milk plant pursuant to § 998.7(b) which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order, or (2) retains automatic pooling status under another Federal order.

Signed at Washington, D.C., on November 24, 1961.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 61-11322; Filed, Nov. 29, 1961; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs
[25 CFR Part 221]
OPERATION AND MAINTENANCE CHARGES

Blackfeet Indian Irrigation Project, Montana

Basis and purpose. Notice is hereby given that pursuant to the acts of Congress approved August 1, 1914, May 18, 1916, and March 7, 1928 (38 Stat. 583; 39 Stat. 142; 45 Stat. 210; 25 U.S.C. 385, 387), and by virtue of the authority delegated by the Commissioner of Indian Affairs to the Area Directors (Bureau Order No. 551 Amendment No. 1; 16 F.R. 5454-71) it is proposed to amend §§ 221.130 and 221.131 as set forth below.

The purpose of the amendment is to increase the annual operation and maintenance rate from \$1.80 to \$2.25 per acre and the assessment rate for excess water from \$1.00 to \$1.25 per acre-foot. These rate increases are necessary in order that the assessments meet the operation and maintenance costs, which have risen due to increases in labor and material costs.

It is the policy of the Department of the Interior, whenever practicable, to afford the public the opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions or objections with respect to the proposed amendments to the Area Director, Bureau of Indian Affairs, 804 North 29th Street, Billings, Montana, within thirty days of publication of this notice in the FEDERAL REGISTER.

1. Section 221.130 is amended to read as follows:

§ 221.130 Basic assessment.

Pursuant to the acts of Congress approved August 1, 1914; May 18, 1916; and March 7, 1928; 38 Stat. 583; 39 Stat. 142; 45 Stat. 210; 25 U.S.C. 385, 387, the basic rate of assessment of operation and maintenance charges against the irrigable lands to which water can be delivered under the Blackfeet Indian Irrigation Project, Montana, for the season of 1962 and subsequent years until further notice is hereby fixed at \$2.25 per acre per annum for the delivery of not to exceed one and one-half acre feet of water per acre for the assessable area under constructed works, water to be delivered on demand based upon an estimated quota of the available supply.

2. Section 221.131 is amended to read as follows:

§ 221.131 Excess water assessment.

Additional water, when available, may be delivered upon request at the rate of \$1.25 per acre foot, or fraction thereof.

PERCY E. MELIS,
Area Director.

[F.R. Doc. 61-11310; Filed, Nov. 29, 1961; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Ethylene Oxide on Black Walnut Meats; Notice of Proposal To Establish Tolerance

The Hammons Products Company, Stockton, Missouri, has requested that action be taken to establish a tolerance for ethylene oxide used as a fumigant on Juglans nigra (black walnut) meats. The United States Department of Agriculture advises that ethylene oxide is

useful for the purposes proposed. Data in the petition indicate that the residues in or on black walnut meats from fumigation with ethylene oxide, as proposed, do not exceed 50 parts per million. These residues will not constitute a hazard to health.

After consideration of the data in the petition and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (c), 68 Stat. 512; 21 U.S.C. 346a(c)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), it is proposed by the Commissioner, in accordance with the request set forth above, that the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR 120.151) be amended to read as follows:

§ 120.151 Tolerances for residues of ethylene oxide.

A tolerance of 50 parts per million is established for residues of ethylene oxide when used as a fumigant in or on the following raw agricultural commodities: Black walnut meats, copra, whole spices.

Any person who has registered or who has submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing ethylene oxide may request, within 30 days from publication of this proposal in the FEDERAL REGISTER, that the proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Any interested person may, within 30 days from the date of the publication of this notice in the FEDERAL REGISTER, file, in quintuplicate, with the Hearing Clerk, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington 25, D.C., written views or comments on this proposal.

Dated: November 22, 1961.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 61-11318; Filed, Nov. 29, 1961; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 14409, RM-290; FCC 61-1403]

TABLE OF ASSIGNMENTS, TELEVISION BROADCAST STATIONS, STATE OF GEORGIA

Proposed Reservation of Certain Television Channels for Non-Commercial Educational Use

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission has before it for consideration the petition for rule making filed on October 27, 1961, by the Georgia State Department of Education

requesting an amendment of § 3.606(b) of the Commission's rules and regulations so as to assign and reserve for non-commercial educational use 8 UHF television channels as follows:

City	Channel No.	
	Delete	Add
Dalton, Ga.....	25+	*18-
Draketown, Ga.....		*14+
Wrens, Ga.....		*20-
Cochran, Ga.....		*15
Dawson, Ga.....		*23
Ashburn, Ga.....		*18+
Pelham, Ga.....		*14-
Warin Springs, Ga.....		*17+
Dublin, Ga.....	15	
Marianna, Fla.....	17+	
Jasper, Ala.....	17	
Tifton, Ga.....	14-	
Americus, Ga.....	*31	
Swainsboro, Ga.....	20-	
Athens, Tenn.....	14+	
Murfreesboro, Tenn.....	18-	
Burnsville, N.C.....	18	
Fort Valley, Ga.....	18+	
Albany, Ga.....	25	
Douglas, Ga.....	32-	

¹ This channel could continue to be used at Jasper, Ala., if a site were chosen approximately 11 miles from Jasper.

² This channel could continue to be used at Americus, Ga., if a site were chosen approximately 1 mile from Americus.

3. In support of its request the Georgia State Department of Education states that it has been given the responsibility of developing a program looking toward the establishment of a state-wide television service; that educational television can make a vital contribution to classroom education; and that the plan proposed would permit state-wide coverage beyond the range of the existing VHF educational assignments in the State.¹

4. In Docket No. 14229 the Commission is considering measures which would enhance the opportunities for successful use of the UHF television channels. Included in the proposals made in that proceeding is one which would eliminate the present television Table of Assignments for UHF and substitute a system in which applicants would apply for the lowest available UHF channel without antecedent rule making. It is at the same time proposed to establish a "pool" of UHF channels reserved for existing VHF stations and for educational purposes. Thus, the entire matter of UHF assignments is under study in that proceeding.

5. Until the matter of overall allocation policy can be decided we believe it would be inappropriate to reserve large blocks of channels such as requested by the petitioner, particularly since immediate construction is not contemplated. We are, however, mindful of the needs for additional channels for educational television in Georgia and believe that a sufficient showing has been made to warrant the institution of rule making concurrently with that in Docket 14229. This will allow consideration of the request for reservation of UHF channels in the 8 communities named in light of the decisions made in the overall UHF proceeding.

¹ In addition to those requested there are presently assigned and reserved for educational stations UHF channels in Atlanta, Columbus, and Macon.

6. Authority for adoption of the proposed amendments is contained in sections 4 (i), and (j), 303 and 307(b) of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested parties may file comments on or before February 5, 1962, and reply comments on or before March 9, 1962. In reaching its decision herein, the Commission will not be limited to consideration of comments of record, but will take into account all relevant information obtained in any manner from informed sources.

8. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished to the Commission.

Adopted: November 21, 1961.

Released: November 27, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11342; Filed, Nov. 29, 1961;
8:52 a.m.]

[47 CFR Part 6]

[Docket No. 11513, FCC 61-1380]

INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

Use of Single Sideband Transmissions in Fixed Radiotelephone Service Be- low 25,000 kc, Except Alaskan and Maritime Fixed; Further Notice of Proposed Rule Making

Further notice is hereby given of proposed rule making in the above-entitled matter insofar as Part 6 of the Rules is concerned.

In the original notice of proposed rule making in Docket 11513 (20 F.R. 7613, Oct. 12, 1955) the Commission invited comments on a proposal looking toward the adoption of rules requiring the use of single sideband transmission for all radiotelephone communications at some unspecified future date. Comments were invited with respect to the length of time necessary to convert to single sideband operation as well as the technical characteristics of the system which might be specified for the services covered by the notice.

With respect to Part 9 of the Commission's rules (Aviation Services), proceedings in the subject Docket were terminated by Report and Order in Dockets 11513, 11678, and 11654, released April 24, 1961 (26 F.R. 3610, April 27, 1961), and by Memorandum Opinion and Order in the same Dockets released June 15, 1961.

With respect to Part 6 of the Commission's rules (International Fixed Public Radiocommunication Services), comments of interested parties and the subsequent expression by the International Telecommunications Union that all Administrations should be urged to discontinue the use of double sideband radiotelephone operation in the frequency

bands below 30 Mc (Article 7, Radio Regulations, Geneva, 1959) both support the Commission's original proposal in this Docket. Accordingly, it is proposed to amend Part 6 as set forth below. The proposed rule would require discontinuance of double sideband operation after January 1, 1965, except in cases where the foreign correspondent is unable to receive single sideband transmission.

The original notice of proposed rule making applied to frequencies below 25,000 kc. However, Article 7 of the Geneva Radio Regulations applies to frequencies below 30,000 kc. The latter figure is preferable for the International Fixed Public Radiocommunication Services since there is space allocated to that service, and assignments made, between 25,000 and 30,000 kc. Accordingly, the rules proposed hereby are made applicable to operations on frequencies below 30,000 kc.

It is not proposed to amend Part 6 to provide technical specifications for single sideband transmissions since the exact technical details of the systems used requires agreement with foreign administrations over whom the Commission has no control.

The proposed amendment is issued under the authority of section 303(r) of the Communications Act of 1934, as amended.

Any interested person who is of the opinion that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before January 2, 1962, written data, views, or arguments setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Rebuttal comments may be filed within ten days from the last day of original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for filing such comments is established. The Commission will consider all such comments before taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

In accordance with the provisions of § 1.54 of the rules an original and 14 copies of all written comments and statements shall be furnished the Commission.

Adopted: November 21, 1961.

Released: November 27, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

1. Section 6.10 is amended to read as follows:

§ 6.10 Radiotelephone.

The term "radiotelephone" as used in this part, with respect to operation on frequencies below 30 Mc/s means a system of radiocommunication for the transmission of speech or, in some cases, other sounds by means of amplitude modulation including double sideband (A3), single sideband (A3A, A3H, or

A3J) or independent sideband (A3B) transmission.

2. Section 6.11 is amended to read as follows:

§ 6.11 Use of radiotelephone by radiotelegraph stations.

The licensee of a radiotelegraph station, using frequencies below 30 Mc/s, may be authorized to use radiotelephone emissions as defined in § 6.10 for the following purposes.

(a) Transmission of addressed program material as set forth in § 6.51.

(b) Controlling the transmission or reception of addressed program material.

(c) Controlling the transmission or reception of facsimile material.

3. Section 6.54 is added as a new section to read:

§ 6.54 Use of double sideband radiotelephone.

Use of double sideband radiotelephone transmissions, on frequencies below 30 Mc/s shall be held to a minimum with a view towards discontinuance of such operation as soon as possible. Except in cases where the foreign correspondent is unable to receive single sideband transmissions, double sideband radiotelephone shall not be transmitted after January 1, 1965.

[F.R. Doc. 61-11343; Filed, Nov. 29, 1961;
8:52 a.m.]

[47 CFR Part 13]

[Docket No. 14401; FCC 61-1381]

COMMERCIAL RADIO OPERATORS

Fraudulent Licenses; Notice of Proposed Rule Making

Notice is hereby given of rule making in the above-entitled matter.

This proposal is prompted by the number of cases involving the perpetration of fraud in matters concerning commercial radio operator licenses. New and diverse techniques as well as the old standbys are continually employed in an effort to share in the privileges accorded holders of operator licenses without being required to meet the standards set by the Commission for obtaining valid licenses.

Section 13.70 of Part 13 of the Commission's rules currently provides:

§ 13.70 Fraudulent licenses.

No licensed radio operator or other person shall obtain or attempt to obtain, or assist another to obtain an operator's license by fraudulent means.

While this section adequately covers fraudulent methods used in obtaining licenses from the Commission, it is lacking with respect to alteration, duplication, or use of licenses issued by the Commission. It seems appropriate that alteration, duplication, and use of licenses should be prohibited by the rules applicable to commercial radio operators. Amendment of § 13.70 to include the above-mentioned offenses, would provide the Commission with a much broader basis on which to deal both admin-

istratively and criminally with those persons who fraudulently seek to circumvent the Commission's commercial radio operator licensing standards. Therefore, it is proposed that § 13.70 be amended to read as follows:

§ 13.70 Fraudulent licenses.

No licensed radio operator or other person shall alter, duplicate, or fraudulently obtain, or assist another to alter, duplicate, or fraudulently obtain an operator license. Nor shall any person use a license issued to another or a license which he knows to have been altered, duplicated, or fraudulently obtained.

Authority for the amendments herein proposed is contained in sections 4(i), 303(l), and 303(r) of the Communications Act of 1934, as amended.

Pursuant to applicable procedures set forth in § 1.213 of the Commission's rules, interested persons may file comments on or before January 2, 1962, and reply comments on or before January 12, 1962. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In making its decision on the rules of general applicability which are proposed herein, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

In accordance with the provisions of § 1.54 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: November 21, 1961.

Released: November 27, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11344; Filed, Nov. 29, 1961;
8:53 a.m.]

**INTERSTATE COMMERCE
COMMISSION**

[49 CFR Part 73]

[No. 3666; Order 49]

SHIPPERS

Regulations for Transportation of Explosives and Other Dangerous Articles

It appearing, that by an order dated October 30, 1961, the above-entitled proceeding was set for hearing at the office of the Interstate Commerce Commission, Washington, D.C. on December 11, 1961:

It further appearing, that by letter dated November 9, 1961, counsel for the

National Tank Truck Carrier, Inc. requests that the said hearing be postponed to a date subsequent to February 16, 1962; and for good cause shown;

It is ordered, That the hearing in the above-entitled proceeding now assigned for hearing on December 11, 1961, at Washington, D.C. before Examiners Henry J. Vinskey and Robert R. Boyd, be, and it is hereby cancelled and the proceeding is reassigned for hearing on February 27, 1962, at 9:30 o'clock a.m. United States standard time at the office of the Interstate Commerce Commission, Washington, D.C. before Examiners Henry J. Vinskey and Robert R. Boyd.

And it is further ordered, That a copy of this order shall be given to persons of interest and to the general public by posting a copy thereof in the office of the Secretary of the Commission at Washington, D.C., for public inspection and by filing a copy with the Director of the Division of the Federal Register for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 20th day of November 1961.

By the Commission, Commissioner Tuggle.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 61-11325; Filed, Nov. 29, 1961;
8:49 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Foreign Assets Control

HAIR OF CERTAIN ANIMALS, COTTON AND SILK WASTE AND CARPET WOOL

Importation From Countries Not in Authorized Trade Territory; Applications for Licenses

Notice is hereby given that the Treasury Department is now prepared to consider applications for licenses under the Foreign Assets Control Regulations (31 CFR 500.101 to 500.808) for the importation during 1962 of limited quantities of the following commodities from countries (other than Communist China and North Korea) not in the authorized trade territory:

Badger hair.
Camel hair.
Carpet wool.
Cotton waste.
Goat hair.
Horse mane hair, horse tail hair and other horse hair.
Silk waste.
Yak hair.

Applications must be filed on or before December 23, 1961.

Any person interested in importing any of the above-named commodities from a country (other than Communist China and North Korea) not in the authorized trade territory may obtain additional information and license application forms from the Foreign Assets Control, Treasury Department, Washington 25, D.C.

Attention is directed to the fact that the term "authorized trade territory" is defined in § 500.322 of the Foreign Assets Control Regulations and that the term "countries (other than Communist China and North Korea) not in the authorized trade territory" as used herein includes Albania, Bulgaria, Czechoslovakia, the Eastern Zone of Germany, the Eastern Sector of Berlin, Estonia, Hungary, Latvia, Lithuania, Outer Mongolia, Poland, Rumania, the Union of Soviet Socialist Republics, and Viet-Nam (only those areas under Communist control).

[SEAL] MARGARET W. SCHWARTZ,
Acting Director,
Foreign Assets Control.

[F.R. Doc. 61-11386; Filed, Nov. 29, 1961; 8:50 a.m.]

Office of the Secretary

[Dept. Circ. 570, 1961 Rev. Supp. No. 15]

AMERICAN FIRE AND CASUALTY CO.

Surety Companies Acceptable on Federal Bonds

NOVEMBER 27, 1961.

A Certificate of Authority has been issued by the Secretary of the Treasury

11300

to the following company under the Act of Congress approved July 30, 1947, 6 U.S.C., secs. 6-13, as an acceptable surety on Federal bonds.

An underwriting limitation of \$261,000.00 has been established for the company. Further details as to the extent and localities with respect to which the company is acceptable as surety on Federal bonds will appear in the next revision of Department Circular 570, to be issued as of May 1, 1962. Copies of the circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Surety Bonds Branch, Washington 25, D.C.

State in Which Incorporated, Name of Company and Location of Principal Executive Office

Florida; American Fire and Casualty Co.; Orlando, Fla.

[SEAL] W. T. HEFFELFINGER,
Fiscal Assistant Secretary.

[F.R. Doc. 61-11327; Filed, Nov. 29, 1961; 8:49 a.m.]

[Dept. Circ. 570, 1961 Rev. Supp. No. 16]

AMERICAN INDEPENDENT REINSURANCE CO.

Acceptable Reinsuring Companies on Federal Bonds

NOVEMBER 27, 1961.

A Certificate of Authority has been issued by the Secretary of the Treasury to the following company as a reinsuring company only on bonds under Treasury Department Circular No. 297 dated July 5, 1922, as amended, 31 CFR 223. An underwriting limitation of \$264,000.00 has been established for the company.

State in Which Incorporated, Name of Company and Location of Principal Executive Office

Florida; American Independent Reinsurance Co.; Orlando, Fla.

[SEAL] W. T. HEFFELFINGER,
Fiscal Assistant Secretary.

[F.R. Doc. 61-11328; Filed, Nov. 29, 1961; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification No. 210]

NEVADA

Small Tract Classification

1. Pursuant to authority delegated by Bureau Order No. 684, dated August 28, 1961 (26 F.R. 8216), and the State Director August 30, 1961 (26 F.R. 8468), I hereby classify the following described public lands, totaling 80 acres in Ormsby

County, Nevada, as suitable for disposal under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) as amended:

MOUNT DIABLO MERIDIAN

T. 15 N., R. 20 E.,
Sec. 21, W $\frac{1}{2}$ SE $\frac{1}{4}$.

Containing 80 acres which are covered by 16 applications from persons entitled to preference under 43 CFR 257.5(a).

2. Classification of the above described lands by this order segregates them from all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The lands classified by this order shall not become subject to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) as amended, until it is so provided by an order to be issued by an authorized officer, opening the lands to application or bid.

4. The 16 valid applications filed prior to November 20, 1961 will be granted, as soon as possible, the preference right provided for by 43 CFR 257.5.

CHARLES E. HANCOCK,
Acting Chief, Division of
Lands and Minerals Management.

NOVEMBER 20, 1961.

[F.R. Doc. 61-11311; Filed, Nov. 29, 1961; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

IDENTIFICATION OF CARCASSES OF CERTAIN HUMANELY SLAUGHTERED LIVESTOCK

Supplemental List of Humane Slaughterers

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904) and the statement of policy thereunder in 9 CFR 181.1 the following table lists additional establishments operated under Federal inspection under the Meat Inspection Act (21 U.S.C. 71 et seq.) which have been officially reported as humanely slaughtering and handling the species of livestock respectively designated for such establishments in the table. This list supplements the lists previously published under the Act (26 F.R. 10242 and 10613) for October and represents those establishments and species which were reported too late to be included in the earlier lists or which have come into compliance with respect to species indicated since the completion of the reports on which the earlier lists were based. The establishment number given with the name of the establishment is

branded on each carcass of livestock inspected at that establishment. The table should not be understood to indicate that all species of livestock slaughtered at a listed establishment are slaughtered and handled by humane methods unless all species are listed for that establishment in the table. Nor should the table be understood to indicate that the affiliates of any listed establishment use only humane methods:

Name of establishments	Establishment No.	Cattle	Calves	Swine
Pauly Packing Co., Inc.	10	(*)	-----	-----
Sunnyland Packing Co. of Alabama.	56	(*)	-----	(*)
Utica Veal Co., Inc.	88	(*)	-----	-----
Vernon Calhoun Packing Co.	355	(*)	-----	-----
Greendell Packing Corp.	542	(*)	(*)	-----

Done at Washington, D.C., this 24th day of November 1961.

E. A. MURPHY,
Acting Director,
Meat Inspection Division,
Agricultural Research Service.

[F.R. Doc. 61-11321; Filed, Nov. 29, 1961; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Bureau of the Census

RETAILERS' INVENTORIES, SALES, NUMBER OF STORES

Notice of Consideration to Continue Survey

Notice is hereby given that the Bureau of the Census is considering a proposal to conduct the 1961 Annual Retail Trade Survey under the Act of Congress approved August 31, 1954, 13 U.S.C. 181, 224, and 225. This is a continuation of surveys conducted in previous years and, for the year 1961, would cover year-end inventories, annual sales, and number of retail stores operated as of the end of the year.

This survey will provide the only continuing source of important information on retail inventories and on total retail sales by geographic area. On the basis of information and recommendations received by the Bureau of the Census, the data will have significant application to the needs of the public, the distributive trades, and governmental agencies, and are not publicly available from non-governmental or other governmental sources.

Such survey, if conducted, shall begin not earlier than 30 days after the publication of this notice in the FEDERAL REGISTER.

Reports will be required only from a selected sample of retail establishments in the United States. The sample will provide, with measurable reliability, statistics on the subjects specified above.

Reports will be requested from sampled stores on the basis of their sales size and/or location in Census Sample Areas. A group of the largest firms, in terms of number of retail stores, will be requested to report their sales summarized by geographic areas.

Copies of the proposed forms and a description of the collection methods are available on request to the Director, Bureau of the Census, Washington 25, D.C.

Any suggestions or recommendations concerning the subject matter of the proposed survey should be submitted in writing to the Director of the Bureau of the Census within 30 days after the date of this publication and will receive consideration.

RICHARD M. SCAMMON,
Director, Bureau of the Census.

[F.R. Doc. 61-11316; Filed, Nov. 29, 1961; 8:48 a.m.]

Office of the Secretary

[Docket No. FC-60; B.I.P. Case No. 294]

HENRY WEINGARTNER & CO., INC.

Appeals Board Decision

In the matter of Henry Weingartner & Co., Inc., Henry Weingartner, President, 217 Broadway, New York 7, N.Y.; Appeals Board Docket No. FC-60, B.I.P. Case No. 294.

By order of the Director, Office of Export Control, Bureau of International Programs (successor to the Bureau of Foreign Commerce (BFC)), dated October 10, 1961 (26 F.R. 9926), Henry Weingartner & Co., Inc., and Henry Weingartner (hereinafter collectively referred to as "respondent") were denied export privileges for the duration of export controls, with provision for conditional restoration three months after the date of the order, the condition being that during one year after the date of the order respondent comply with the order and with all requirements of the Export Control Act of 1949, as amended, and with all regulations, licenses, and orders issued thereunder. Respondent appealed from the order and also moved for a stay pending the appeal. The stay was granted by the Appeals Board under date of October 18, 1961 (26 F.R. 10003), to remain effective until the date of the final decision of the Board on the appeal.

The Board has considered the appeal on the basis of the record before the Compliance Commissioner, who presided over an oral hearing in which respondent participated personally and by attorney. The record includes the transcript of the hearing, the exhibits introduced at the hearing, briefs and legal memoranda filed by the Government and respondent, together with the charging letter, Report of Compliance Commissioner, and the order in question. The Board has also considered an appeal brief filed for respondent. Oral argument on the appeal was held before the

Board on November 8. At that time counsel for respondent submitted copy of a letter dated February 27, 1958 from Karl Lachnit (another respondent who had defaulted) to respondent. This letter had been mentioned in the proceedings, and respondent's counsel stated that he had just received it from Lachnit after repeated requests. The Board agreed to make this letter part of the record and the letter (and translation) is admitted as Respondent's Appeal Exhibit No. 1.

The Report of the Compliance Commissioner states the salient facts, repeated in the order appealed from. For this reason the Board does not feel it necessary to state the facts in any detail, and any such statement by the Board is not to be considered exhaustive but merely as calling attention to some facts which the Board deems especially pertinent. In referring to exhibits, Government's exhibits were introduced by numbers, and respondent's by letters. It should also be kept in mind that a number of documents mentioned or referred to in the introduced exhibits do not appear in the record before the Board.

On February 24, 1958, the firm of Dr. Alfred Back ("Back") of Vienna confirmed by telegram an apparently previous order to respondent for 240 tons of tin mill black plate rejects in the name of a firm, Estab. River of Vaduz, Liechtenstein (Ex. 1). The sizes were specified (120 tons @ .20mm; 10 @ .22; 40 @ .25; 20 @ .26; and 50 @ .28). On the same date a cable (Ex. 2) was sent to respondent by Lachnit-Feroma repeating the specifications and asking for price CIF Gdynia and delivery terms. Lachnit at that time was manager of a Viennese firm, Feroma, and from that time on extensive correspondence was carried on between him and respondent with reference to the order. Unquestionably Lachnit was a moving and interested party in this order. The interest, if any, of Feroma, does not clearly appear, but Lachnit had coupled his name with that of Feroma at least once in his cable of February 24. Under date of February 27, 1958, River sent a formal order to respondent (Ex. 5), coupled with an end-use statement to the effect that the material was destined for Hungary.

On March 3 Weingartner filed his application for an export license (Ex. 9). Box 14 of the application (Applicant's Certification), sub. (d) certified that "all parties to the export transaction * * * and other facts of the export transaction are fully and accurately reflected herein * * *". The application disclosed only Estab. River, with an accompanying statement by River disclosing the ultimate consignee and purchaser as "METALIMPEX", Budapest, Hungary. The license application was rejected on March 22 (Ex. 10) and an appeal was taken by respondent on March 24 (Ex. 11) to the Appeals Board. The Board denied the appeal April 24, 1958.

While the appeal was pending, respondent had been in regular communication with Lachnit. On April 10 respondent cabled Lachnit to "have Feroma mail complete new signed order which must be submitted Washington since appeal pending" (Ex. 18). By letter dated April 13 on Feroma stationery, Feroma referred to the cable and placed and order for the identical material specified in the pending River order, the tonnage and sizes being broken down the same as in that order. The letter was signed by Lachnit for Feroma. On April 22 respondent wrote the BFC, stating that he was aware that his appeal was pending, and adding that he had received "from another party", namely, Feroma, a "similar order" for shipment to Hamburg, and asking if he could proceed with shipment (Ex. 19). With this letter were enclosed a copy of the Feroma order and a cable from Feroma. On April 14, 1958 (Ex. 22) Lachnit wrote to respondent, with salutation to Mr. Thewman, respondent's manager, stating that he had sent the order from Feroma, assuring respondent of "every protection" and mentioning that the Hungarians had made funds available for the merchandise but were becoming impatient.

While respondent might not have had this last letter, Ex. 22, at the time he wrote BFC, it would seem that respondent was less than candid with BFC with the knowledge he had at hand. At the time he wrote the letter respondent was aware that the tonnage and sizes of both orders were identical, and that the same overseas intermediaries were active in both orders. In addition to the correspondence with Lachnit, respondent had received a cable dated April 9 from Ferrobac (Back) asking about shipment of 240 tons of rejects for account Feroma, country of destination Austria. The letter from Lachnit of April 14 should have been a clear indication to respondent that the Hungarians were still in the picture, but the letter was written in the context of the "new" order that had just been mailed by Lachnit. It is true that at that time respondent's appeal with reference to the River order was pending, but there would have been no occasion even to mention the Hungarians in connection with the second order. The entire letter must be taken to indicate that the second order was of interest to the Hungarians, who were "impatient" and might place their dollars elsewhere, "and then all our mutual efforts would have been in vain."

On April 30, BFC wrote respondent (Ex. 27) in answer to his inquiry of April 22, to the effect that if the ultimate destination of the rejects was Austria it could be exported under General License GRO without application, but that if Feroma were merely a purchaser and the ultimate destination was a Sub-Group A country, an application would be required.

From that time on cables and letters were exchanged between respondent and Lachnit. Respondent kept insisting that it was necessary that he have some

formal end-use statement that the country of destination was Austria, and Lachnit provided him with the statement (see, e.g., Exs. 30-33).

Without further detail it appears that Lachnit engaged a forwarder's firm, Schenkers, to handle the shipments of the rejects (Ex. 34); that respondent made partial shipments (approximately 100 and 40 tons) under General License (Exs. 40, 46); that Lachnit/Feroma received credits and remittances from respondent for the differences between prices collected by respondent and a lower price (Exs. 41, 47); that Schenker was instructed to turn over all shipping documents to Back (Ex. 51-B); that Feroma later disclaimed any actions of Lachnit (who had left the firm) and denied that it had ever dealt in this matter (Ex. 52-D-1); and that after the shipping documents were turned over to Back who had been involved in the original Hungarian order.

The Government does not base its case on whether or not the rejects were actually diverted to a Soviet-Bloc country. The basic charge against respondent is his withholding of vital information from BFC, omitting names of parties in interest, and failure to disclose all elements of the two orders, which might have enabled BFC to prevent either an actual diversion, or a situation which might lead to diversion to unauthorized destinations. The Board is of the opinion that, on the entire record, the Report of the Compliance Commissioner and the ensuing Order were justified, with reservations as to the Order hereafter noted.

The Department of Commerce has been entrusted with the program and enforcement of export controls. It attempts to protect the integrity of such controls. Its enforcement proceedings, while entailing certain sanctions, are remedial in nature, not criminal. Counsel for respondent has ably and strenuously argued the legal proposition that where two constructions of documents or evidence are possible, the presumption of innocence should weigh the decision in favor of respondent. The Board agrees with this as a general principle, but can not find it applicable in this case where the documentary evidence is certainly sufficient to have put respondent on notice that he might be an instrument in evasion of controls. Respondent had a duty to disclose all pertinent facts to BFC.

Having in mind the deterrent nature of export sanctions and respondent's apparent reputable record, apart from the incidents involved in this appeal, the Board feels that the interests of the Government will be fully protected and that the ends of justice will be served by a partial remission of the three-month suspension in Part IV of the order appealed from. The Board feels that a total actual suspension period of 45 days will accomplish the necessary remedial result.

Accordingly:

(1) The Appeal is denied.

(2) The denial order of October 10, 1961, is sustained, except as to Part IV thereof, which is hereby modified to read as follows:

Forty-five (45) days from December 3, 1961 (January 17, 1962) without further order of the Bureau of International Programs, Henry Weingartner, Henry Weingartner & Co., Inc., shall have their export privileges restored to them conditionally, the condition for such restoration being that during one year following the date hereof the said respondents shall comply in all respects with this order and with all requirements of the Export Control Act of 1949, as amended, and all regulations, licenses and orders issued thereunder.

(3) In all other respects the order appealed from is affirmed.

Washington 25, D.C., November 24, 1961.

JOHN F. LUKENS,
Chairman, Appeals Board.

[F.R. Doc. 61-11317; Filed, Nov. 29, 1961;
8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 13204]

HELICOPTER OPERATORS CONSOLIDATED MAIL RATE PROCEEDING

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference on the above-entitled matter is assigned to be held on December 8, 1961 at 10 a.m., e.s.t., in Room 803, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Merritt Ruhlen.

Dated at Washington, D.C., November 27, 1961.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 61-11340; Filed, Nov. 29, 1961;
8:52 a.m.]

[Docket 12435]

MACKAY AIRLINES, INC.

Notice of Prehearing Conference

In the matter of the applications of Mackey Airlines, Inc. for renewal and amendment of its certificate of public convenience and necessity for Routes 110, 112, and 145.

Notice is hereby given that a prehearing conference on the above-entitled matter is assigned to be held on December 13, 1961 at 10 a.m., e.s.t., in Room 925, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner William J. Madden.

Dated at Washington, D.C., November 27, 1961.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 61-11341; Filed, Nov. 29, 1961;
8:52 a.m.]

**FEDERAL COMMUNICATIONS
COMMISSION**

[List No. 29; FCC 61-1398]

STANDARD BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

NOVEMBER 24, 1961.

Notice is hereby given, pursuant to § 1.354(c) of the Commission rules, that on January 3, 1962, the standard broadcast applications listed below will be considered as ready and available for processing, and that pursuant to § 1.106(b) (1) and § 1.361(c) of the Commission rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on January 2, 1962 which involves a conflict necessitating a hearing with an application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. by whichever date is earlier: (a) the close of business on January 2, 1962 or (b) the earlier effective cut-off date which a listed application or any other conflicting application may have by virtue of conflicts necessitating a hearing with applications appearing on previous lists.

The attention of any party in interest desiring to file pleadings concerning any pending standard broadcast application pursuant to section 309(d) (1) of the Communications Act of 1934, as amended, is directed to § 1.359(i) of the Commission rules for provisions governing the time of filing and other requirements relating to such pleadings.

Adopted: November 21, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

Applications from the top of the processing line

- BP-13389 New, Raeford, N.C.
Stanmar Broadcasting Co.
Req: 1400 kc, 250 w, U.
- BP-14429 New, Prentiss, Miss.
Jeff Davis Broadcasting Service.
Req: 1510 kc, 1 kw, Day.
- BP-14558 New, Kealahou, Hawaii.
Maunaloa Broadcasting, Inc.
Req: 790 kc, 1 kw, U.
- BP-14581 KGOS, Torrington, Wyo.
Kermit G. Kath.
Has: 1490 kc, 250 w, U.
Req: 1490 kc, 250 w, 1 kw—LS, U.
- BP-14582 KTSM, El Paso, Tex.
Tri-State Broadcasting Co., Inc.
Has: 1380 kc, 500 w, 1 kw—LS, U.
Req: 1380 kc, 500 w, 5 kw—LS, U.
- BP-14583 KBFS, Belle Fourche, S. Dak.
Belle Fourche Broadcasting Co.
Has: 1450 kc, 250 w, U.
Req: 1450 kc, 250 w, 1 kw—LS, U.
- BP-14584 New, Paynesville, Minn.
Paynesville Broadcasting Co.
Req: 1300 kc, 500 w, Day.
- BP-14585 WMAN, Mansfield, Ohio.
Richland, Inc.
Has: 1400 kc, 250 w, U.
Req: 1400 kc, 250 w, 1 kw—LS, U.
- BP-14587 New, Abilene, Kans.
Wyman N. and Willa M. Schnepf
as Joint Tenants.
Req: 1560 kc, 250 w, Day.
- BP-14588 New, Farmerville, La.
Union Broadcasting Co., Inc.
Req: 1470 kc, 1 kw, Day.
- BP-14589 New, Arlington, Tex.
Richard Tuck Enterprises.
Req: 1240 kc, 100 w, U.
- BP-14590 WEOK, Poughkeepsie, N.Y.
Hudson Valley Broadcasting Corp.
Has Lic: 1390 kc, 1 kw, Day.
Has CP: 1390 kc, 5 kw, DA, Day.
Req: 1390 kc, 1 kw, 5 kw—LS,
DA-2, U.
- BP-14592 New, Beloit, Kans.
KRFS Radio.
Req: 1560 kc, 250 w, Day.
- BP-14594 New, Holly Hill, S.C.
Palmetto Communications Corp.
Req: 1440 kc, 1 kw, Day.
- BP-14595 New, Centre, Ala.
Radio Centre
Req: 1560 kc, 1 kw, Day.
- BP-14597 WCCW, Traverse City, Mich.
D. C. Summerford.
Has: 1310 kc, 1 kw, Day.
Req: 1310 kc, 5 kw, Day.
- BP-14598 WDEA, Ellsworth, Maine.
Coastal Broadcasting Co., Inc.
Has: 1350 kc, 1 kw, Day.
Req: 1370 kc, 5 kw, Day.
- BP-14603 New, Cuthbert, Ga.
Radio Cuthbert.
Req: 1510 kc, 1 kw, Day.
- BP-14604 New, Donalsonville, Ga.
Radio Donalsonville.
Req: 1500 kc, 1 kw, Day.
- BP-14607 WCMI, Ashland, Ky.
WCMI, Inc.
Has: 1340 kc, 250 w, U.
Req: 1340 kc, 250 w, 1 kw—LS, U.
- BP-14608 WHUC, Hudson, N.Y.
Colgreene Broadcasting Co., Inc.
Has: 1230 kc, 250 w, U.
Req: 1230 kc, 250 w, 1 kw—LS, U.
- BP-14609 New, Robstown, Tex.
George Leon Gossage.
Req: 1510 kc, 500 w, Day.
- BP-14610 WCNC, Elizabeth City, N.C.
Albermarle Broadcasting Co.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw—LS, U.
- BP-14612 WCER, Charlotte, Mich.
Eaton County Broadcasting Co.
Has: 1390 kc, 1 kw, DA, Day.
Req: 1390 kc, 5 kw, DA, Day.
- BP-14614 KTWL, Golden, Colo.
Norman Broadcasting.
Has: 1250 kc, 1 kw, DA, Day.
Req: 1250 kc, 500 w, 5 kw—LS,
DA-2, U.
- BP-14615 New, Spring Lake, N.C.
Radio Smiles, Inc.
Req: 1450 kc, 250 w, 500 W—LS, U.
- BP-14617 New, Winfield, Ala.
John Self.
Req: 1300 kc, 500 w, Day.
- BP-14618 New, Iowa Falls, Iowa.
Iowa Falls Broadcasting Corp.
Req: 1510 kc, 500 w, Day.
- BP-14619 New, Vidor, Tex.
Vidor Broadcasting Co., Inc.
Req: 1510 kc, 1 kw, Day.
- BP-14620 KWAD, Wadena, Minn.
KWAD Broadcasting Co.
Has: 920 kc, 1 kw, DA-N, U.
Req: 920 kc, 5 kw, DA-2, U.
- BP-14635 KRDO, Colorado Springs, Colo.
Pikes Peak Broadcasting Co.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw—LS, U.
- BP-14637 KQAQ, Austin, Minn.
KQAQ, Inc.
Has: 970 kc, 5 kw, DA, Day.
Req: 970 kc, 500 w, 5 kw—LS,
DA-2, U.
- BP-14638 WCAM, Camden, N.J.
City of Camden.
Has: 1310 kc, 250 w, U.
Req: 1310 kc, 250 w—LS, U.
- BP-14640 KOVE, Lander, Wyo.
Fremont Broadcasting, Inc.
Has: 1330 kc, 1 kw, DA-N, U.
Req: 1330 kc, 1 kw, 5 kw—LS,
DA-N, U.
- BP-14643 KWBW, Hutchinson, Kans.
Nation's Center Broadcasting Co.,
Inc.
Has: 1450 kc, 250 w, U.
Req: 1450 kc, 250 w, 1 kw—LS, U.
- BP-15644 New, Bolivar, Tenn.
Savannah Broadcasting Service,
Inc.
Req: 1560 kc, 250 w, Day.
- BMP-9326 WFFF, Columbia, Miss.
Fortenberry Enterprises.
Has: 1600 kc, 500 w, Day.
Req: 1360 kc, 1 kw, Day.
- BP-14646 New, Shenandoah, Pa.
Schuylkill Trans-Audio Corp., Inc.
Req: 1530 kc, 250 w, Day.
- BP-14648 New, Rhinelander, Wis.
Rhinelander Television Cable
Corp.
Req: 1300 kc, 5 kw, Day.
- BP-14651 WREL, Lexington, Va.
Rockbridge Broadcasting Corp.
Has: 1450 kc, 250 w, U.
Req: 1450 kc, 250 w, 1 kw—LS, U.
- BP-14652 WNAM, Neenah-Menasha, Wis.
Neenah-Menasha Broadcasting
Co., Inc.
Has: 1280 kc, 1 kw, DA-N, U.
Req: 1280 kc, 1 kw, 5 kw—LS,
DA-2, U.
- BP-14654 WLTC, Gastonia, N.C.
Gastonia Broadcasting Service,
Inc.
Has: 1370 kc, 1 kw, Day.
Req: 1370 kc, 5 kw, Day.
- BP-14656 WXAL, Demopolis, Ala.
Demopolis Broadcasting Co., Inc.
Has: 1400 kc, 250 w, U.
Req: 1400 kc, 250 w, 1 kw—LS,
DA-D, U.
- BP-14658 WYLD, New Orleans, La.
Rounsaville of New Orleans, Inc.
Has: 940 kc, 500 w, 1 kw—LS,
DA-N, U.
Req: 940 kc, 500 w, 10 kw—LS,
DA-2, U.
- BP-14659 WMSR, Manchester, Tenn.
Manchester Broadcasting Co.
Has: 1320 kc, 1 kw, Day.
Req: 1320 kc, 500 w, 5 kw—LS,
DA-N, U.
- BP-14665 New, Shakopee, Minn.
Progress Valley Broadcasters Co.
Req: 1530 kc, 500 w, Day.
- BP-14669 WMNT, Manati, Puerto Rico.
Arecibo Broadcasting Corp., Inc.
Has: 1500 kc, 250 w, U.
Req: 1500 kc, 250 w, 1 kw—LS, U.
- BP-14670 New, Ridgeland, S.C.
James W. Synott.
Req: 1430 kc, 1 kw, Day.
- BP-14672 WATT, Cadillac, Mich.
Midwestern Broadcasting Co.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw—LS, U.
- BP-14674 WLEU, Erie, Pa.
Radio Station WESB.
Has: 1450 kc, 250 w, U.
Req: 1450 kc, 250 w, 1 kw—LS, U.

[F.R. Doc. 61-11346; Filed, Nov. 29, 1961; 8:53 a.m.]

[Docket Nos. 14404, 14405; FCC 61-1396]

**KWTX BROADCASTING CO. (KWTX)
AND KERRVILLE BROADCASTING
CO. (KERV)**

**Order Designating Applications for
Consolidated Hearing on Stated
Issues**

In re applications of KWTX Broad-
casting Company (KWTX) Waco, Texas,
Docket No. 14404, File No. BP-13806,
Has: 1230 kc, 250 w, U, Requests: 1230
kc, 250 w, 1 kw—LS, U; Kerrville Broad-
casting Company (KERV), Kerrville,
Texas, Docket No. 14405, File No.

BP-14050, Has; 1230 kc, 250 w, U, Requests: 1230 kc, 250 w, 1 kw—LS, U; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C. on the 21st day of November 1961;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially and otherwise qualified to construct and operate the instant proposals; and

It further appearing, that the following matters are to be considered in connection with the issues specified below:

1. The above-captioned proposals involve mutual interference and are being consolidated because the Kerrville proposal would cause interference within the normally protected service area of Station KDLK, Del Rio, Texas, which is located near the Mexican border and, pursuant to treaty and § 3.21 of the Commission's rules, cannot increase power. The KWTX proposal would cause interference within the existing service area of Station KERV, unless the KERV proposal is favorably considered.

2. Slight mutual interference is indicated between the KWTX proposal and the proposal, File No. BP-14452 of Station KZEE, Weatherford, Texas. However, the interference from the KZEE proposal is not excessive and any grant of the KWTX proposal will be conditioned upon acceptance of interference from the KZEE proposal.

It further appearing, that, in view of the foregoing, the Commission is unable to make the statutory finding that a grant of the subject applications would serve the public interest, convenience, and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues set forth below:

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the instant 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 may be expected to gain or lose primary service from each of the instant applicants and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposal of KWTX Broadcasting Company would cause objectionable interference to Station KERV, Kerrville, Texas, 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.

4. To determine whether the instant proposal of Kerrville Broadcasting Company would cause objectionable interference to Stations KWTX, Waco, Texas, and KDLK, Del Rio, Texas, 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, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.

6. To determine, in the 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 KWTX Broadcasting Company, Kerrville Broadcasting Company and Queen City Broadcasting Company, licensees of Stations KWTX, KERV and KDLK, respectively, are made parties to the proceeding, with respect to their existing facilities.

It is further ordered, That in the event of a grant of the instant KWTX proposal, the construction permit shall contain a condition that the permittee shall accept any interference that may be received in the event of a grant of the application, File No. BP-14452, of Bartlesville Broadcasting Company requesting an increase in power of Station KZEE, Weatherford, Texas.

It is further ordered, That if either or both of the instant applications are granted, any construction permit shall contain a condition that the permittee shall accept such interference as may be imposed by other existing 250 watt Class IV stations authorized to increase power to 1,000 watts.

It is further ordered, That if either or both of the instant applications are granted, any construction permit shall contain a condition that the permittee shall submit with its application for license antenna resistance measurements made in accordance with § 3.54 of the Commission rules.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission 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 applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.362(b) of the Commission's rules, give notice of the hearing, either individually or, if feasible, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the pub-

lication of such notice as required by § 1.362(c) of the rules.

It is further ordered, That, the issues in the above-captioned 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: November 27, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11347; Filed, Nov. 29, 1961;
8:53 a.m.]

[Docket No. 14406; FCC 61-1397]

**LAKE SHORE BROADCASTING CO.,
INC. (WDOE)**

**Memorandum Opinion and Order
Designating Applications for Con-
solidated Hearing on Stated Issues**

In re application of Lake Shore Broadcasting Company, Inc. (WDOE), Dunkirk, New York, Docket No. 14406, File No. BML-1943, Has: 1410 kc, 500 w, DA-N, U, Dunkirk, N.Y., Requests: 1410 kc, 500 w, DA-N, U, Dunkirk-Fredonia, New York; for modification of license.

1. The Commission has before it for consideration (1) a "Petition to Deny" the above-captioned application, filed, pursuant to section 309(d) of the Communications Act of 1934, as amended, on April 24, 1961 by Dunkirk-Fredonia Broadcasting, Inc., licensee of Station WBUZ, Fredonia, New York (hereafter "petitioner" or "WBUZ") and (2) a "Reply to Petition to Deny" filed May 8, 1961, by applicant, licensee of Station WDOE, Dunkirk, N.Y.

2. In support of its claim to standing, petitioner states:

It is obvious, therefore, that the only reason for requesting dual-city assignment is the fact that since Dunkirk and Fredonia are contiguous cities, WDOE sells advertising time in both communities. Obviously, WDOE cannot sell as readily in Fredonia as it can in Dunkirk because it is licensed to Dunkirk and because there is a broadcast service licensed to Fredonia. If it were licensed to Fredonia, WDOE could undoubtedly sell more advertising time in Fredonia to the enhancement of the WDOE financial position and to the detriment of the WBUZ financial position. This obvious injury to the financial position of WBUZ affords WBUZ standing to this Petition to Deny as a party in interest, whose interest would be adversely affected by the granting of the pending application.

The Commission is of the opinion that the material quoted above is not sufficient to establish that WBUZ is a "party in interest" under section 309(d) of the Communications Act of 1934, as amended. Petitioner alleged, generally and without specificity, that the granting of the instant application would result in financial injury to them. We are not

willing to presume that granting to a broadcast station, a dual-city designation, is ipso facto, economic injury sufficient to give "standing" to an existing broadcast facility in one of the cities that form part of the dual-city assignment. Wichita-Hutchinson Co. (KTVH), 20 RR 185 (FCC 60-576); also see WEHT, Inc., 15 RR 861 (FCC 57-940); cf. Interstate Broadcasting Company, Inc., v. Federal Communications Commission, 285 F.2d 270, 20 RR 2112 (1960). Petitioner has not alleged facts sufficient to form a nexus between the grant of the instant application and economic injury to it. Therefore, the petition must be dismissed.

3. On the merits, petitioner alleges, in substance, that applicant does not meet the requirements of § 3.30(b) of the Commission's rules concerning the requirement of maintenance of main studios in each city of the dual-city assignment, and the origination of a substantial number of local live programs from each city, or that it would be an unreasonable burden to have single-city designation as set forth in § 3.30(a) of the rules. Applicant uses its transmitter site as its main studio location and contemplates to continue the use of the transmitter site as the main studio for both cities in its requested designation. The Commission agrees with this contention, to the extent that it is unable to make a statutory finding that a grant of the instant application, in the absence of an evidentiary hearing, is in the public interest, convenience and necessity.

In view of the foregoing: *It is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the instant application is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the instant proposal of Lake Shore Broadcasting Company, Inc. is consistent with the requirements of § 3.30(b) of the Commission rules, to warrant an authorization for dual-city operation.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether a grant of the instant application would serve the public interest, convenience and necessity.

It is further ordered, That the Petition to Deny filed April 24, 1961 by Dunkirk-Fredonia Broadcasting, Inc. is dismissed.

It is further ordered, That to avail itself of the opportunity to be heard, the applicant pursuant to § 1.140 of the Commission 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 applicant herein shall, pursuant to § 3.11(a) (2) of the Communications Act of 1934, as amended, and § 1.362(b) of the Commission's rules, give notice of the hearing, within the time and in the manner

prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.362(c) of the rules.

Adopted: November 21, 1961.

Released: November 27, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11348; Filed, Nov. 29, 1961;
8:53 a.m.]

[Docket No. 14202; FCC 61-1385]

**REA RADIO AND ELECTRONIC
LABORATORY**

Memorandum Opinion and Order

In re application of Peter Corrado, Concetta Corrado and Anthony Corrado, d/b as Rea Radio and Electronic Laboratory, East Palatka, Florida, Docket No. 14202, File No. BR-3869; for renewal of license of Station WREA, East Palatka, Florida.

1. The Commission has before it for consideration the Broadcast Bureau's motion to terminate the hearing and dismiss the application, filed October 17, 1961; and applicant's petition for change in place of hearing, filed September 29, 1961, together with pleadings timely filed in response thereto.

2. By order released July 25, 1961 (FCC 61-920), the application of the above-captioned applicant for renewal of license of standard broadcast station WREA, 1480 kc, 500 w, Day, at East Palatka, Florida, was designated for hearing at or near East Palatka. This order noted, among other things, that the application form had not been properly prepared or prosecuted; that the operation logs raised a question as to whether the operators on duty had read the appropriate instruments; that a possible unauthorized transfer of control had occurred; and that WREA had ceased operation without Commission approval, its transmitter had been repossessed, and the antenna tower had been dismantled. An issue as to the applicant's financial qualifications was also designated for hearing.

3. The Bureau requests termination of the hearing because WREA has failed to comply with the notice requirements of § 1.362. This request will be denied. Section 1.362(c) requires that WREA, which is seeking renewal, broadcast notice of the renewal hearing over its station during the week immediately after release of the designation order. However, if the facts recited in the order of designation are in fact, correct, compliance with this rule would have been impossible. We deem it appropriate, under these circumstances, to permit WREA to satisfy the requirements of 47 USC 311, by publishing notice in a newspaper pursuant to § 1.362(b), the timing of such publication to be computed from the re-

lease date of this order instead of the order of designation.¹

4. The Bureau has also requested that WREA's application be dismissed and its license cancelled. The facts on which this request is based were before the Commission at the time the hearing was designated, and were recited in the designation order, supra, par. 2. The Bureau's request, therefore, amounts to an untimely filed petition for reconsideration of the order of designation and will be denied.

5. Station WREA has requested that the hearing be held in Washington, D.C., instead of East Palatka, Florida, claiming that otherwise it would be financially injured and personally inconvenienced. The Bureau has replied that personal inconvenience is not made a determining factor by section 311(b) of the Communications Act, as amended.² It is our general policy to hold revocation and renewal hearings in the field.³ However, the factual and technical matters at issue in this proceeding do not appear to be of the sort which can best be proven through the participation of local witnesses, and the public interest considerations which underlie our policy of field hearings will not be served by imposing on the parties the expense of transporting technical and financial witnesses to the small community. Therefore, the hearing will be held in Washington, D.C., unless further factual developments persuade the presiding Hearing Examiner that actual presence in East Palatka, Florida is essential for conducting a proper and complete hearing.

Accordingly, it is ordered, This 21st day of November 1961, that the Broadcast Bureau's Motion to Terminate Hearing and Dismiss Application, filed October 17, 1961, is denied; and

It is further ordered, In accordance with the foregoing opinion, that REA Radio and Electronics Laboratory shall publish notice of the instant hearing in accordance with 47 CFR 1.362(b) (e) (f) and (g); and

It is further ordered, That the petition for change in place of hearing, filed September 29, 1961, by REA Radio and

¹ Our denial of this aspect of the Bureau's petition is not to be construed as an indication that the Chief Hearing Examiner cannot, pursuant to the authority recently delegated to him by our order released November 17, 1961 (FCC 61-1346), entertain an appropriate petition in the event of a failure by the applicant to fulfill the notice requirements imposed by the instant order and 47 CFR 1.362 (b), (e), (f), and (g).

² Section 311(b) provides, in part, that hearings "may be held at such places as the Commission shall determine to be appropriate, and in making such determination in any case the Commission shall consider whether the public interest, convenience, or necessity will be served by conducting the hearing at a place in, or in the vicinity of, the principal area to be served by the station involved."

³ Palmetto Broadcasting Company (WDKD), FCC 61-588, released May 4, 1961.

Electronics Laboratory, is granted, to the extent indicated herein.

Released: November 27, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11349; Filed, Nov. 29, 1961;
8:53 a.m.]

[Docket No. 14313; FCC 61M-1837]

WFYC, INC. (WFYC)

Order Continuing Hearing

In re application of WFYC, Incorporated (WFYC), Alma, Michigan, Docket No. 14313, File No. BP-13807; for construction permit.

A prehearing conference in the above-entitled matter having been held on November 22, 1961 and it appearing from the record made therein that certain agreements were reached which properly should be formalized by order:

It is ordered, This 22d day of November 1961 that:

(1) The direct case of the applicant shall be presented by written sworn exhibits;

(2) Preliminary drafts of the applicant's technical engineering exhibits shall be exchanged among the parties on January 9, 1962;

(3) The written sworn exhibits constituting the direct case of the applicant shall be exchanged among the parties and copies thereof supplied the Hearing Examiner on January 23, 1962;

(4) Sworn rebuttal exhibits, if any, shall be exchanged among the parties and copies thereof supplied the Hearing Examiner on January 30, 1962;

(5) Notification of witnesses to be called for cross-examination shall be given on or before February 6, 1962;

It is further ordered, That the hearing in this matter heretofore scheduled to commence on December 15, 1961 is continued to February 12, 1962 commencing at 10:00 a.m. in the offices of the Commission at Washington, D.C.

Released: November 24, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11350; Filed, Nov. 29, 1961;
8:54 a.m.]

[Docket Nos. 14402, 14403; FCC 61-1394]

WNOW, INC. (WNOW) AND RADIO ASSOCIATES, INC. (WEER)

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of WNOW, Inc. (WNOW), York, Pennsylvania, Docket No. 14402, File No. BP-13793, Has: 1250 kc, 1 kw, D, Requests: 1250 kc, 5 kw, DA-D; Radio Associates, Inc. (WEER), Warrenton, Virginia, Docket No. 14403, File No. BP-14802, Has: 1570 kc, 500 w,

Day, Requests: 1250 kc, 1 kw, Day; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 21st day of November 1961;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing, that, mutual co-channel interference will result from simultaneous operation of the instant proposals, and the resulting population loss to the proposal of WEER would be greater than 10 percent which is excessive pursuant to § 3.28(d) (3) of the Commission rules; and

It further appearing, that, the proposed operation of Station WNOW would cause interference to the existing operation of Station WHUM, Reading, Pennsylvania, and to the operation of Station WHUM proposed in the application of the Eastern Radio Corporation (File No. BP-12707, Docket No. 13121) which was designated for hearing by order of the Commission on August 1, 1959; that, by letter of June 22, 1960, counsel for the Eastern Broadcasting Company requested that the WNOW proposal be designated for hearing on the ground of expected interference to Station WHUM; and

It further appearing, that the WEER proposal specifies use of a transmitter unapproved for 1,000-watt operation; and

It further appearing, that, in view of the foregoing, the Commission is unable to make the statutory finding that a grant of the subject applications would serve the public interest, convenience, and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues set forth below:

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the instant 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 may be expected to gain or lose primary service from the proposed operations of Stations WNOW and WEER and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and the interference that each of the instant proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from either of the instant proposals.

3. To determine whether the instant proposal of WNOW, Inc. would cause ob-

jectionable interference to existing and proposed operations of Station WHUM, Reading, Pennsylvania, 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.

4. To determine whether interference received from the proposal of WNOW would affect more than ten percent of the population within the normally protected primary service area of the instant proposal of WEER, in contravention of § 3.28(d) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

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

6. To determine, in the 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, the Eastern Radio Corporation, licensee of Station WHUM, is made a party to the proceeding.

It is further ordered, That, in the event of a grant of the application of WEER, the construction permit shall contain a condition that the permittee shall submit data made in accordance with §§ 3.48 and 2.524 of the Commission rules for type acceptance of the proposed transmitter.

It is further ordered, That, in the event of a grant of the proposal of WEER, the following condition is to be included: To the extent that it permits operation with daytime facilities prior to local sunrise, § 3.87 of the Commission rules is not applicable to this authorization, and such operation is prohibited.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission 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 applicants herein shall, pursuant to section 311(a) (2) of the Communications Act of 1934, as amended, and § 1.362(b) of the Commission's rules, give notice of the hearing, either individually or, if feasible, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.362(c) of the rules.

It is further ordered, That, the issues in the above-captioned 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: November 27, 1961.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 61-11351; Filed, Nov. 29, 1961;
8:54 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-10342 etc.]

JEAN PAUL GETTY ET AL.

Notice of Applications and Date of Hearing

NOVEMBER 27, 1961.

Jean Paul Getty, Trustee of the Estate of Sarah Getty, Deceased, Docket No. G-10342; Hanley Company, Operator, Docket No. G-10879; Humble Oil and Refining Company, Docket No. G-15900;¹ Allen Burr, Operator, et al., Docket No. CI60-494; The First National Bank of Amarillo, Texas, Trustee, Docket No. CI60-817;² Wm. James Miller, Docket No. CI61-48; David J. Harmer, Docket No. CI61-49; Sun Oil Company, Docket No. CI61-51; Stonestreet Lands Company, Docket No. CI61-59; Robert F. White (Operator), et al., Docket No. CI61-69; MPS Production Company, (Operator), et al., Docket No. CI61-70; Pan American Petroleum Corporation, Docket No. CI61-74; La Gloria Oil & Gas Company, et al., Docket No. CI61-80; Kerr-McGee Oil Industries, Inc., Docket No. CI61-81; Blanco Oil Company (Operator), et al., Docket No. CI61-82; Paul V. Draughn, Sr., Docket No. CI61-85; Tidewater Oil Company, Docket No. CI61-86; The Superior Oil Company, Docket No. CI61-87; LuRay Land, Inc., Docket No. CI61-96; Fred W. Stalnaker, et al., Docket No. CI61-97; Smith & Barker Oil & Gas Company, Inc., Docket No. CI61-98; John C. O'Leary, Docket No. CI61-99; Ferrell L. Prior, et al., Docket No. CI61-105; E. M. Reynolds & C. E. Goodwin, d.b.a. Marion Gas Company, Docket No. CI61-106; The Atlantic Refining Company, Docket No. CI61-107; Neville G. Penrose, Inc. (Operator), Docket No. CI61-202; Berea Gas, Docket No. CI61-681; Humble Oil & Refining Company, Docket No. CI61-689; Humble Oil & Refining Company, Docket No. CI61-697; Vesta Fuel Company Well #9, Docket No. CI61-790; Bagwell Oil Company, Docket No. CI61-1113; Martin F. Sweeney, Docket No. CI61-1179; James I. Shearer, et al., Docket No. CI61-1208; Robert L. Wolff, Docket No. CI61-1212; Gulf Oil Corporation, Docket No. CI61-1213; D. W. Stiles, D. U. Price & B. H. Keyes, CI61-1217; Mayflo Oil Company, Docket No. CI61-1225; Petroleum Syndicate of West Virginia, Docket No. CI61-1227; David Law, Docket No. CI61-1231; Prior Oil Company, Docket No. CI61-1232; Continental Oil Company, Docket No. CI61-1238; Carl E. Smith, Inc., Docket No. CI61-1263.

May Hatfield Gas Company, Docket No. CI61-1274; Humble Oil & Refining Company, Docket No. CI61-1306; William K. Davis, Operator, et al., Docket No. CI61-1313; J. M. Huber Corporation, Docket No. CI61-1329; Chrada Gas Company, Docket No. CI61-1338; Lee Kinnebrew, Jr., et al., Docket No. CI61-1347; Dulaney Oil Company, Docket No. CI61-1355; Jake L. Hamon, (Operator), et al., Docket No. CI61-1356; G. C. Jones, et al., Docket No. CI61-1359; Humble Oil & Refining Company, Docket No. CI61-1360; United Producing Company, Inc., Docket No. CI61-1361; Aylward Drilling Company, Docket No. CI61-1364; Chelle-tex Corporation, Docket No. CI61-1371; Gus Glasscock, Inc., Docket No. CI61-1372; Midwest Pipe & Supply Co., Docket No. CI61-1382; Pan American Petroleum Corporation, Docket No. CI61-1387; J. C. Trahan Drilling Contractor, Inc., Docket No. CI61-1388; Getty Oil Company, Docket No. CI61-1403; Socony Mobil Oil Company, Inc., Docket No. CI61-1404; Socony Mobil Oil Company, Inc., Docket No. CI61-1413; Texas Gas Exploration Corporation, (Operator), et al., Docket No. CI61-1414; Kincaid Oil & Gas Company, Docket No. CI61-1415; C. Lewis Stryer and Stanley Yochym, Docket No. CI61-1423; Stonestreet Lands Company, Docket No. CI61-1424; Shell Oil Company, Docket No. CI61-1430; Matella Cooper No. 1, Docket No. CI61-1440; Harper Oil Company, Operator, Docket No. CI61-1447; Northern Pump Company, Operator, et al., Docket No. CI61-1450; Prior Oil Company, Docket No. CI61-1477; Stonestreet Lands Company, Docket No. CI61-1479; Columbian Fuel Corporation; Docket No. CI61-1489; Jarvis-Carpenter Gas Company, Docket No. CI61-1493; P. & J. Development Company, Inc., Docket No. CI61-1503; John F. Younger, et al., Docket No. CI61-1522; Big Injun Oil and Gas Co., Inc., Docket No. CI61-1534; Gulf Oil Corporation, Docket No. CI61-1544; C. L. Kingsbury, et al., Docket No. CI61-1575; James I. Shearer, et al., Docket No. CI61-1576; Texas Pacific Coal and Oil Company, (Operator), et al., Docket No. CI61-1582; Okey Hinzman Oil & Gas Co., Docket No. CI61-1592; Reedwell Development Co., Docket No. CI61-1593; Albert Smith Oil & Gas Co., Docket No. CI61-1594; Prior Oil Company, Docket No. CI61-1600; Braden Drilling, Inc., Docket No. CI61-1611; Alamo Corporation, Docket No. CI61-1612; J. C. Benedict, d.b.a. Benedict Oil Associates, Docket No. CI61-1613.

Lawson Petroleum Company, Operator et al., Docket No. CI61-1623; Panhandle Development Co., Inc. (Operator) et al., Docket No. CI61-1624; Kimbark Exploration Company, Operator et al., Docket No. CI61-1651; Sohio Petroleum Company, Docket No. CI61-1662; Tidewater Oil Company, Docket No. CI61-1663; Stonestreet Lands Company, Docket No. CI61-1669; T. H. McElvain, Docket No. CI61-1674; Northern Natural Gas Producing Company, Docket No. CI61-1676; Humble Oil & Refining Company, Docket No. CI61-1677; Horizon Oil & Gas Co., Docket No. CI61-1704; Welsh Oil & Gas (Operator) et al., Docket No. CI61-1740.

Take notice that each of the above Applicants has filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas in interstate commerce, as hereinafter described, all as more fully represented in the respective applications, amendments and supplements thereto which are on file with the Commission and open to public inspection.

The Applicants herein produce and propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

Docket Nos., Field and Location, Purchaser, and Price per Mcf.

G-10342; Hitch "P" Unit, Guyman-Hugoton Field, Texas County, Okla.; Phillips Petroleum Co.; 9.8262 cents at 14.65 psia.
G-10879 (as Supp.); H. S. Gray Lease, Glasscock County, Tex.; El Paso Natural Gas Co.; 10.0 cents at 14.65 psia.
G-15900; N. W. Dower Field, Beaver County, Okla.; Northern Natural Gas Co.; 15.5 cents at 14.65 psia.
CI60-494; Fannin Field, Goliad County, Tex.; Syljo Gas Co.; 12.0 cents at 14.65 psia.
CI60-817; West Panhandle Field, Potter County, Tex.; Colorado Interstate Gas Co.; 12.0 cents at 14.65 psia.
CI61-48; Six Mile Field, Calhoun County, Tex.; Tennessee Gas Transmission Co.; 12.0 cents at 14.65 psia.
CI61-49; Freeman's Creek District, Lewis County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
CI61-51 (as Supp.); North Oak Hill Field, Rusk County, Tex.; Lone Star Gas Co.; 14.49 cents at 14.65 psia.
CI61-59; DeKalb District, Gilmer County, W. Va.; South Penn Natural Gas Co.; 15.0 cents at 15.325 psia.
CI61-69; Grunder Pool, Stafford County, Kans.; Panhandle Eastern Pipe Line Co.; 15.0 cents at 14.65 psia.
CI61-70; Sugar Valley Field, Matagorda County, Tex.; Tennessee Gas Transmission Co.; 15.0 cents at 14.65 psia.
CI61-74; Pioneer Unit, Alkali Creek Structure Area, Sweetwater County, Wyo.; Mountain Fuel Supply Co.; sweet gas 12.0 cents at 15.025 psia, sour gas 9.0 cents at 15.025 psia.
CI61-80; Sugar Creek Field, Claiborne Parish, La.; Texas Eastern Transmission Corp.; 15.8007 cents at 15.025 psia.
CI61-81; John Creek Field, Hutchinson County, Tex.; Northern Natural Gas Co.; 16.5 cents at 14.65 psia.
CI61-82; Redfish Bay, Northeast, Nueces County, Tex.; United Gas Pipe Line Co.; 14.800 cents at 14.65 psia.
CI61-85; Maxie and Pistol Ridge Field, Forrest County, Miss.; United Gas Pipe Line Co.; 21.0 cents at 15.025 psia.
CI61-86; East Kremlin Field, Garfield County, Okla.; Consolidated Gas Utilities Corp.; 11.0 cents at 14.65 psia.
CI61-87; The Pioneer Unit, Alkali Creek Area, Sweetwater County, Wyo.; Mountain Fuel Supply Co.; sweet gas 12.0 cents at 15.025 psia, sour gas 9.0 cents at 15.025 psia.
CI61-96; Freeman's Creek District, Lewis County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
CI61-97; Freeman's Creek District, Lewis County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
CI61-98; Sherman District, Calhoun County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
CI61-99; Little Flower Field, Victoria County, Tex.; Tennessee Gas Transmission Co.; 14.5 cents at 14.65 psia.

¹ Formerly The Carter Oil Co.

² Formerly Lee T. Bivins.

- CI61-105; Court House District, Lewis County, W. Va.; Hope Natural Gas Co.; 25.9 cents at 15.325 psia.
- CI61-106; Ripley District, Jackson County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-107; West Nona Mills Field, Hardin County, Tex.; Trunkline Gas Co.; 14.75 cents at 14.65 psia.
- CI61-202; Fradean Field, Upton County, Tex.; Phillips Petroleum Co.; 12.03684 cents at 14.65 psia.
- CI61-681; Grant District, Monongalia County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-689; Acreage in Texas County, Okla.; Panhandle Eastern Pipe Line Co.; 16.0 cents at 14.65 psia.
- CI61-697; Acreage in Hansford County, Tex.; Panhandle Eastern Pipe Line Co.; 16.5 cents at 14.65 psia.
- CI61-790; Union District, Ritchie County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1113 (as Supp.); West Union District, Doddridge County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1179; Court House District, Lewis County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1208; Central District, Doddridge County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1212; Court House District, Lewis County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1213; Atoka, Eddy County, N. Mex.; Transwestern Pipeline Co.; 16.0 cents at 14.65 psia.
- CI61-1217; Fruitland and Pictured Cliff, San Juan County, N. Mex.; El Paso Natural Gas Co.; 11.0 cents at 15.025 psia.
- CI61-1225; Camrick Northwest Gas Pool, Beaver County, Okla.; Northern Natural Gas Co.; 17.0 cents at 14.65 psia.
- CI61-1227; Charles Burke No. 1, Gilmer County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1231; Freeman's Creek District, Lewis County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1232; West Union District, Doddridge County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1238; Hugoton Field, Finney County, Kans.; Northern Natural Gas Co.; 12.0 cents at 14.65 psia.
- CI61-1263; West Union District, Doddridge County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1274; Murphy District, Ritchie County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1306; Heard Ranch and Medio Creek, Bee County, Tex.; Trunkline Gas Co.; 15.25 cents at 14.65 psia.
- CI61-1313; S. E. Rhode Ranch, McMullen County, Tex.; Texas Eastern Transmission Corp.; 11.6 cents at 14.65 psia.
- CI61-1329; Snake Creek, Clark County, Kans.; Northern Natural Gas Co.; 16.0 cents at 14.65 psia.
- CI61-1338; Collins Settlement District, Lewis County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1347; East Panhandle Field, Gray County, Tex.; El Paso Natural Gas Co.; 12.0 cents at 14.65 psia.
- CI61-1355; El Puerto Field, Starr County, Tex.; Tennessee Gas Transmission Co.; 17.24 cents at 14.65 psia.
- CI61-1356; Azalea Field Area, Midland County, Tex.; Phillips Petroleum Co.; 12.5 cents at 14.65 psia.
- CI61-1359; Clay District, Ritchie County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1360; Normanna Field, Bee County, Tex.; United Gas Pipe Line Co.; 17.596 cents at 14.65 psia.
- CI61-1361; Acreage in Texas County, Okla.; Panhandle Eastern Pipe Line Co.; 16.0 cents at 14.65 psia.
- CI61-1364; Acreage in Barber County, Kans.; Cities Service Gas Co.; 13.0 cents at 14.65 psia.
- CI61-1371; Morales Field, Jackson County, Tex.; Tennessee Gas Transmission Co.; 15.0 cents at 14.65 psia.
- CI61-1372; Morales Field, Jackson County, Tex.; Chelletek Corp.; 13.0 cents at 14.65 psia.
- CI61-1382; Mocane Field, Beaver County, Okla.; Cities Service Gas Co.; 12.0 cents at 14.65 psia.
- CI61-1387; North LaWard Field, Jackson County, Tex.; United Gas Pipe Line Co.; 12.1536 cents at 14.65 psia.
- CI61-1388; Simsboro Field, Lincoln Parish, La.; United Gas Pipe Line Co.; 18.75 cents at 15.025 psia.
- CI61-1403; Langlie-Mattix Field, Lea County, N. Mex.; El Paso Natural Gas Co.; 9.0 cents at 14.65 psia.
- CI61-1404; Signal Peak, Culberson County, Tex.; El Paso Natural Gas Co.; 15.70925 cents at 14.65 psia.
- CI61-1413; Hugoton Field, Finney County, Kans.; Cities Service Gas Co.; 12.0 cents at 14.65 psia.
- CI61-1414; Moss Hill, Liberty County, Tex.; Trunkline Gas Co.; 15.0 cents at 14.65 psia.
- CI61-1415; Murphy District, Ritchie County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1423; Salt Lake District, Braxton County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1424 (as Supp.); DeKalb District, Gilmer County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1430 (as Supp.); Brown-Bassett, Ellenburger Field, Terrell County, Tex.; El Paso Natural Gas Co.; 16.0 cents at 14.65 psia.
- CI61-1440; DeKalb District, Gilmer County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1447; Acreage in Beckham County, Okla.; El Paso Natural Gas Co.; 12.0 cents at 14.65 psia.
- CI61-1450; Goree Field, Bee County, Tex.; Texas Eastern Transmission Corp.; 10.6 cents at 14.65 psia.
- CI61-1477; Court House District, Lewis County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1479; DeKalb District, Gilmer County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1489; Acreage in Texas County, Okla.; Panhandle Eastern Pipe Line Co.; 16.0 cents at 14.65 psia.
- CI61-1493; Washington District, Calhoun County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1503 (as Supp.); McClellan District, Doddridge County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1522; Azalea Field, Midland County, Tex.; Phillips Petroleum Co.; 12.5 cents at 14.65 psia.
- CI61-1534; West Union District, Doddridge County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1544; Manziel Field, Wood County, Tex.; Lone Star Gas Co.; 14.49 cents at 14.65 psia.
- CI61-1575; Washington District, Calhoun County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1576; Central District, Doddridge County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1582 (as Supp.); Langlie-Mattix Field, Lea County, N. Mex.; El Paso Natural Gas Co.; 9.0 cents at 14.65 psia.
- CI61-1592; Troy District, Gilmer County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1593; Grant District, Ritchie County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1594; Union District, Ritchie County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1600; Court House District, Lewis County, W. Va.; Equitable Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1611; Acreage in Pratt County, Kans.; Panhandle Eastern Pipe Line Co.; 15.0 cents at 14.65 psia.
- CI61-1612; Richfield Gas Field, Morton County, Kans.; Panhandle Eastern Pipe Line Co.; 16.0 cents at 14.65 psia.
- CI61-1613; Fellsburg Field, Edwards County, Kans.; Northern Natural Gas Co.; 16.0 cents at 14.65 psia.
- CI61-1623; Hugoton Field, Finney County, Kans.; Northern Natural Gas Co.; 12.0 cents at 14.65 psia.
- CI61-1624; Acreage in Seward County, Kans.; Panhandle Eastern Pipe Line Co.; 16.0 cents at 14.65 psia.
- CI61-1651; Elm Grove Field, Logan County, Colo.; Kansas-Nebraska Natural Gas Co., Inc.; 4.0 cents at 16.4 psia.
- CI61-1662; East Camrick Field, Beaver County, Okla.; Natural Gas Pipeline Co. of America; 17.0 cents at 14.65 psia.
- CI61-1663; Calhoun Field, Lincoln Parish, La.; Texas Gas Transmission Corp.; 18.75 cents at 15.025 psia.
- CI61-1669; DeKalb District, Gilmer County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.
- CI61-1674; Ignacio-Blanco Field, La Plata County, Colo.; El Paso Natural Gas Co.; 13.0 cents at 15.025 psia.
- CI61-1676; Ingham Field, Crockett County, Tex.; El Paso Natural Gas Co.; 15.71 cents at 14.65 psia.
- CI61-1677; Cooke Field, LaSalle County, Tex.; Transcontinental Gas Pipe Line Corp.; 13.68225 cents at 14.65 psia.
- CI61-1704; Hansford Field, Hansford and Ochiltree Counties, Tex.; Northern Natural Gas Co.; 17.0 cents at 14.65 psia.
- CI61-1740; North LaWard Field, Jackson County, Tex.; United Gas Pipe Line Co.; 14.1792 cents at 14.65 psia.

The public convenience and necessity require that these matters be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 27, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however*, That the Commission may after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 15, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of and the intermediate decision procedure in cases

where a request therefor is made: *Provided, further*, If a protest, petition to intervene, or notice of intervention be timely filed in any of the above dockets, the above hearing date as to that docket will be vacated and a new date for hearing will be fixed as provided in § 1.20 (b) (2) of the rules of practice and procedure.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11329; Filed, Nov. 29, 1961; 8:50 a.m.]

[Docket No. CP62-55]

AMERICAN GAS CO.

Notice of Application

NOVEMBER 22, 1961.

Take notice that on August 30, 1961, American Gas Company (Applicant), 546 South 24th Avenue, Omaha 5, Nebr., filed in Docket No. CP62-55 an application pursuant to section 7(a) of the Natural Gas Act for an order directing Natural Gas Pipeline Company of America (Natural) to establish physical connection of its facilities with those which Applicant proposes to construct and to sell and deliver natural gas to Applicant for resale and distribution in the communities of Tabor, Sidney, and Hamburg, Fremont County, Iowa, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 29 miles of 3-inch lateral pipeline extending from Natural's transmission line near Glenwood, Iowa, to the communities of Tabor, Sidney, and Hamburg in which Applicant has been granted franchises to construct and operate distribution systems.

The estimated cost of constructing Applicant's proposed facilities is \$775,780, in the third year of operation, which will be financed by the sale of first mortgage bonds for approximately two-thirds of said cost and by the sale of common stock for the remaining third.

The estimated natural gas requirements under this application are:

	Mcf at 14.73 psia and 1,000 Btu	
	Peak day	Annual
1st year.....	695	83,530
2d year.....	959	108,710
3d year.....	1,266	136,720

This gas is to be used solely for residential and commercial purposes.

On November 6, 1961, Natural Gas Pipeline Company of America filed its answer to the subject application stating that available pipeline capacity and gas supply will permit the requested service and that issuance of an appropriate order is not opposed.

Protests or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington

25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 15, 1961.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11302; Filed, Nov. 29, 1961; 8:45 a.m.]

[Docket No. RI62-177]

BEL OIL CORP.

Order Providing for Hearing on and Suspension of Proposed Change in Rate

NOVEMBER 22, 1961.

On October 26, 1961, Bel Oil Corporation (Bel Oil)¹ tendered for filing a proposed redetermined increased rate from 11.62163 cents to 21.3333 cents per Mcf (including tax reimbursement) at 15,025 psia, totaling \$11,654 annually, for its jurisdictional sale of natural gas to Tennessee Gas Transmission Company from the South Crowley Field, Acadia Parish, Louisiana. The proposed change was designated Supplement No. 2 to Bel Oil's FPC Gas Rate Schedule No. 11. Bel Oil requested waiver of notice and proposed an effective date of October 26, 1961. The proposed rate exceeds the applicable area rate level as set forth in the Commission's Statement of General Policy No. 61-1.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the above-described proposed change and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon the date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 2 to Bel Oil's FPC Gas Rate Schedule No. 11.

(B) Pending hearing and decision thereon, Supplement No. 2 to Bel Oil's FPC Gas Rate Schedule No. 11 be and it is hereby suspended and the use thereof deferred until April 26, 1962, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until the period of suspension has ex-

¹ c/o Thomas V. McMahan, Attorney, 2100 First City National Bank Building, Houston 2, Tex.

pired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 8, 1962.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11303; Filed, Nov. 29, 1961; 8:45 a.m.]

[Docket No. CP62-99]

COLORADO INTERSTATE GAS CO.

Notice of Application and Date of Hearing

NOVEMBER 22, 1961.

Take notice that on October 19, 1961, Colorado Interstate Gas Company, (Applicant) Colorado Springs National Bank Building, Colorado Springs, Colorado, filed in Docket No. CP62-99 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof from time to time during the calendar year 1962 at a total cost not to exceed \$800,000, with no single project to exceed a cost of \$250,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

Applicant proposes to finance the subject facilities from current working funds.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 27, 1961 at 9:30 a.m. e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of

§ 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 15, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11304; Filed, Nov. 29, 1961;
8:46 a.m.]

[Docket No. RI62-195]

FRIO-TEX OIL AND GAS CO.

Order Providing for Hearing on and Suspension of Proposed Change in Rates

NOVEMBER 22, 1961.

On October 23, 1961, Frio-Tex Oil and Gas Company (Frio-Tex)¹ tendered for filing a proposed change in its presently effective rate schedule for sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes increased rates and charges, is contained in the following designated filing:

Description: Notice of Change, dated October 20, 1961.

Purchaser and producing area: Transcontinental Gas Pipe Line Corporation (W. Big Foot Field, Frio County, Tex.) (R.R. Dist. No. 1).

Rate schedule designation: Supplement No. 1 to Frio-Tex's FPC Gas Rate Schedule No. 1.

Effective date: December 1, 1961 (stated effective date is the effective date proposed by Frio-Tex).

Proposed rate: 14.69575 cents per Mcf (gravity gas).

Effective rates: 13.88225 cents per Mcf (gravity gas).

Annual increase: \$58,000.

Pressure base: 14.65 psia.

In support of its proposed periodic rate increase, Frio-Tex submits a cost of service for the 12-month period ending June

¹ Address: P.O. Box 988, Corpus Christi, Texas.

30, 1961 and additional data for gathering, dehydrating and compressing gas during the same period.

The proposed rate exceeds the applicable area price level as set forth in the Commission's Statement of General Policy No. 61-1 and the amendments thereto.

The proposed increased rate may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 1 to Frio-Tex's FPC Gas Rate Schedule No. 1 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 1 to Frio-Tex's FPC Gas Rate Schedule No. 1.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until May 1, 1962, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 5, 1962.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11305; Filed, Nov. 29, 1961;
8:46 a.m.]

[Docket No. CP61-45]

INDIANA NATURAL GAS CORP.

Notice of Postponement of Hearing

NOVEMBER 22, 1961.

Upon consideration of the request filed November 16, 1961, by Counsel for Indiana Natural Gas Corporation, for postponement of the hearing now scheduled for December 20, 1961, in the above-designated matter;

Notice is hereby given that the hearing now scheduled for December 20, 1961, is postponed to a date to be hereafter fixed by further notice.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-11306; Filed, Nov. 29, 1961;
8:46 a.m.]

[Docket Nos. RI62-178—RI62-192]

SUNRAY MID-CONTINENT OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates¹

NOVEMBER 22, 1961.

Sunray Mid-Continent Oil Company, Docket No. RI62-178; Sinclair Oil & Gas Company (Operator), et al., Docket No. RI62-179; Sinclair Oil & Gas Company, Docket No. RI62-180; Rebstock and Reeves Drilling Company (Operator), et al., Docket No. RI62-181; Bel Oil Corporation (Operator), et al., Docket No. RI62-182; Falcon Seaboard Drilling Company, et al., Docket No. RI62-183; The British-American Oil Producing Company, Docket No. RI62-184; Sun Oil Company, Docket No. RI62-185; Apache Oil Corporation, Docket No. RI62-186; Bartessa Oil Corporation, et al., Docket No. RI62-187; Edwin L. Cox, Docket No. RI62-188; Socony Mobil Oil Company, Inc., Docket No. RI62-189; Sinclair Oil & Gas Company, Docket No. RI62-190; Benedum-Trees Oil Company (Operator), et al., Docket No. RI62-191; Continental Oil Company, et al., Docket No. RI62-192.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

¹ This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until--	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI62-178	Sunray Mid-Continent Oil Co., P.O. Box 2039, Tulsa 2, Okla.	123	2	Cities Service Gas Co., Northeast Glenwood Field, Beaver County, Okla.	\$304	10-23-61	12-21-61	5-21-62	* 12.0	13.0	-----
		129	3	Northern Natural Gas Co., Harper Ranch Field, Clark County, Kans.	6,246	10-23-61	1-1-62	6-1-62	* 15.0	16.0	-----
		145	1	-----	3,755	10-25-61	1-1-62	6-1-62	* 14.0	15.0	-----
		152	6	Northern Natural Gas Co., Beaver, Oklahoma, and Ochiltree Counties, Tex.	13,724	10-23-61	1-1-62	6-1-62	* 16.5	17.5	RI61-119
RI62-179	Sinclair Oil & Gas Co. (Operator), et al., P.O. Box 521, Tulsa 2, Okla.	94	6	Northern Natural Gas Co., Elwood and North Elwood Fields, Beaver County, Okla.	4,083	10-24-61	1-1-62	6-1-62	* 15.0	16.0	-----
RI62-180	Sinclair Oil & Gas Co.	135	3	Northern Natural Gas Co., North Harper Ranch Field, Clark County, Kans.	1,618	10-24-61	1-1-62	6-1-62	* 15.0	16.0	-----
RI62-181	Rebstock and Reeves Drilling Co. (Operator), et al. c/o Truman Woodward, Jr., Attorney, 1122 Whitney Building, New Orleans, La.	1	9	United Fuel Gas Co., Valentine Field, Lafourche Parish, La.	6,308	10-25-61	11-25-61	4-25-62	* 19.9	20.3	RI61-232
RI62-182	Bel Oil Corp. (Operator), et al., P.O. Box 1442, Lake Charles, La.	5	5	Texas Gas Transmission Corp., Oberlin and North Elton Fields, Allen Parish, La.	17,520	10-25-61	1-1-62	6-1-62	* 18.75	20.25	-----
RI62-178	Sunray Mid-Continent Oil Co., P.O. Box 2039, Tulsa 2, Okla.	118	5	Northern Natural Gas Co., North Hansford Field, Hansford County, Tex.	10,586	10-25-61	1-1-62	6-1-62	* 16.5	17.5	-----
RI62-183	Falcon Seaboard Drilling Co., et al., c/o John L. Arrington, Jr., Attorney, 510 Oklahoma Natural Building, Tulsa 19, Okla.	5	3	Panhandle Eastern Pipe Line Co., Haviland Field, Kiowa County, Kans.	356	10-27-61	12-1-61	5-1-62	* 15.0	16.0	-----
RI62-184	The British-American Oil Producing Co., P.O. Box 749, Dallas 21, Tex.	8	7	Iroquois Gas Corp., Sheridan Field, Colorado County, Tex.	2,665	10-30-61	11-30-61	4-30-62	* 17.668	18.6776	G-13471
		15	2	Panhandle Eastern Pipe Line Co., Greenough Field, Beaver County, Okla.	15	10-30-61	11-30-61	4-30-62	* 12.2827	13.1760	-----
		47	1	United Fuel Gas Co., Valentine Field, Lafourche Parish, La.	1,104	10-30-61	11-30-61	4-30-62	* 19.9	20.3	-----
RI62-185	Sun Oil Co., 1608 Walnut Street, Philadelphia 3, Pa.	78	1	Panhandle Eastern Pipe Line Co., Hansford Field, Hansford County, Tex.	27,778	10-27-61	12-1-61	5-1-62	* 16.0	17.0	-----
RI62-186	Apache Oil Corp., 823 South Detroit, Tulsa 20, Okla.	6	3	Kansas-Nebraska Natural Gas Co., Inc., Camrick Field, Beaver and Texas Counties, Okla.	3,650	10-31-61	12-1-61	5-1-62	* 16.0	17.0	-----
RI62-187	Bartessa Oil Corp., et al., P.O. Box 1531, Dallas, Tex.	3	4	El Paso Natural Gas Co., Spraberry Field, Regan County, Tex.	856	10-30-61	11-30-61	4-30-62	* 10.096	17.2295	-----
RI62-188	Edwin L. Cox, 2100 Adolphus Tower, Dallas, Tex.	20	6	Kansas-Nebraska Natural Gas Co., Inc., Texas County, Okla.	27	11-1-61	12-2-61	5-2-62	* 16.8	17.0	RI61-253
RI62-189	Socony Mobil Oil Co., Inc., 150 East 42d Street, New York 17, N.Y.	11	4	Panhandle Eastern Pipe Line Co., Prairie Field, Hansford County, Tex.	3,002	10-31-61	12-1-61	5-1-62	* 16.0	17.0	-----
RI62-190	Sinclair Oil & Gas Co., P.O. Box 521, Tulsa 2, Okla.	108	1	Texas Gas Transmission Corp., Lake Arthur Field, Jefferson Davis Parish, La.	1,082	11-1-61	1-1-62	6-1-62	* 18.75	19.75	-----
RI62-191	Benedum - Trees Oil Co. (Operator), et al., Benedum-Trees Building, Pittsburgh 22, Pa.	9	3	Texas Gas Transmission Corp., South Lake Arthur Field, Jefferson Davis Parish, La.	2,738	11-2-61	1-1-62	6-1-62	* 18.875	19.875	G-17712
RI62-192	Continental Oil Co., et al., P.O. Box 2197, Houston 1, Tex.	6	2	Cities Service Gas Co., Southeast Eureka Field, Grant and Alfalfa Companies, Okla.	1,179	11-2-61	12-3-61	5-3-62	* 12.0	13.0	-----

1 The stated effective date is that requested by respondent.
 2 The stated effective date is the first day after expiration of the required statutory notice.

3 The pressure base is 14.65 psia.
 4 The pressure base is 15.025 psia.

The proposed increased rates exceed the applicable area price levels.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4

and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37) on or before January 4, 1962.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
 Secretary.

[F.R. Doc. 61-11307; Filed, Nov. 29, 1961; 8:46 a.m.]

[Docket No. CP62-92]

TENNESSEE GAS TRANSMISSION CO.
Notice of Application and Date of
Hearing

NOVEMBER 22, 1961.

Take notice that on October 12, 1961, Tennessee Gas Transmission Company (Applicant), P.O. Box 2511, Houston 1, Texas, filed in Docket No. CP62-92 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof from time to time during the calendar year 1962 at a total cost not to exceed \$5,000,000, with no single project to exceed a cost of \$500,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

Applicant proposes to finance the subject facilities from general funds or from revolving credit.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 27, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 15, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
 Secretary.

[F.R. Doc. 61-11308; Filed, Nov. 29, 1961; 8:47 a.m.]

SECURITIES AND EXCHANGE
COMMISSION

[File No. 1-3848]

APEX MINERALS CORP.

Order Summarily Suspending Trading

NOVEMBER 24, 1961.

In the matter of trading on the San Francisco Mining Exchange in the common stock, \$1.00 par value of Apex Minerals Corporation, File No. 1-3848.

The common stock, \$1.00 par value, of Apex Minerals Corporation, being listed and registered on the San Francisco Mining Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c) (2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19(a) (4) of the Securities Exchange Act of 1934 that trading in said security on the San Francisco Mining Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for a period of ten (10) days, November 27, 1961, to December 6, 1961, both dates inclusive.

By the Commission.

ORVAL L. DuBOIS,
 Secretary.

[F.R. Doc. 61-11312; Filed, Nov. 29, 1961; 8:47 a.m.]

[File No. 2-7110]

ARCADY CORP.

Notice of Application for Exemption

NOVEMBER 22, 1961.

Notice is hereby given that The Arcady Corporation, an Illinois corporation (hereinafter sometimes referred to as the "Corporation"), has filed on July 28, 1961, an application pursuant to Rule 15d-20 of the general rules and regulations under the Securities Exchange Act of 1934 ("Act") for an order exempting such Corporation from the operation of section 15(d) of said Act with respect to the duty to file any reports required by such section and the rules and regulations thereunder, and has amended such application on October 20, 1961 (which application as

amended shall hereinafter be referred to as the "Application").

Paragraph (a) of Rule 15d-20 under the Act provides that the Commission may, upon application and subject to appropriate terms and conditions, exempt an issuer from the operation of section 15(d) of the Act with respect to the duty to file any reports required by that section and the rules and regulations thereunder, if the Commission finds that (1) all of the outstanding securities of such issuer are held of record and the number of such record holders does not exceed 50 persons; and (2) the filing of such reports by such issuer is not necessary in the public interest or for the protection of investors.

The Corporation in its Application alleges that:

(1) The only outstanding security of The Arcady Corporation is its Common Stock (\$1 par value) and that on October 9, 1961, there were 86,676 shares of such common stock issued and outstanding.

(2) All of such outstanding common stock is held of record and on October 9, 1961, there were 45 holders of record of such outstanding Common Stock (such number of record holders having been determined in accordance with paragraph (e) of Rule 15d-20 under the Act).

(3) Of the 86,676 shares of common stock of the Corporation outstanding, only 1,021 of such shares (having an aggregate net asset value on May 31, 1961, of less than \$25,000) were held by persons other than officers and directors of the Corporation, and their families and business associates.

(4) The Corporation is not presently making and does not propose to make a public offering of its securities.

(5) The filing by the Corporation of reports pursuant to section 15(d) of the Act and the rules and regulations thereunder is not necessary in the public interest or for the protection of investors.

The Corporation in its Application has undertaken that in the event the order requested by such Application should be granted, it will annually thereafter furnish any shareholder of the Corporation, upon such shareholder's request, a financial statement of the Corporation containing a balance sheet as at the end of its last previous fiscal year and an earnings statement for such fiscal year.

Notice is further given that an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate may be issued by the Commission at any time on or after December 11, 1961, unless prior thereto a hearing is ordered by the Commission. Any interested person may, not later than December 8, 1961, at 5:30 p.m., e.s.t., submit to the Commission in writing his views or any additional facts bearing on the Application or the desirability of a hearing thereon, or request the Commission in writing that a hearing be held thereon. Any such communication should be addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., and should state briefly the nature of the interest of

the person submitting such communication, and if such communication includes a request that a hearing be held on the Application, the reason for such request, and the issues of fact or law which such person desires to controvert should also be set forth.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 61-11313; Filed, Nov. 29, 1961;
8:47 a.m.]

[File No. 24W-2490]

SILTRONICS, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

NOVEMBER 24, 1961.

I. Siltronics, Inc. (issuer), a Pennsylvania corporation, with its principal offices located at Pittsburgh, Pennsylvania, filed with the Commission on March 23, 1961 a notification on Form 1-A and an offering circular relating to an offering of 150,000 shares of common stock at \$2 per share for an aggregate of \$300,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b).

II. The Commission has reasonable cause to believe that:

A. The terms and conditions of Regulation A were not complied with, in that:

1. The issuer has failed to amend its notification and offering circular to disclose the fact that First Pennington Corporation, John R. Wilson, Jr. & Company, Shawe and Company, Bruno-Lenchner, Inc., and Strathmore Securities, Inc., acted as underwriters in the offer and sale of the issuer's securities.

2. The issuer failed to disclose in its notification a prearranged plan for the distribution of 25,000 shares of the common stock covered by the notification.

3. The issuer failed to disclose in its notification the sale of certain shares of its common stock in violation of section 5 of the Securities Act of 1933 and failed to disclose in the offering circular contingent liabilities arising from such sales.

4. The issuer failed to furnish an offering circular, as required by Rule 256, to purchasers of approximately 4,000 shares of the issuer's common stock.

5. The aggregate amount of securities offered to the public exceeded the \$300,000 limitation as prescribed by Rule 254 of Regulation A.

B. The offering circular contains untrue statements of material facts and omits to state material facts necessary to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The failure to disclose that First Pennington Corporation, John R. Wilson, Jr. & Company, Shawe and Company, Bruno-Lenchner, Inc., and Strathmore Securities, Inc. were to act as underwriters in the securities of the issuer.

2. The failure to disclose the prearranged plan of distribution of 25,000 shares of the offering.

3. The failure to disclose that the issuer had a contingent liability with respect to certain shares of its common stock sold in violation of section 5 of the Securities Act of 1933.

C. The offering was made in violation of section 17(a) of the Securities Act of 1933, as amended.

III. It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 61-11314; Filed, Nov. 29, 1961;
8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 572]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 27, 1961.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 64583. By order of November 21, 1961, the Transfer Board approved the transfer to Joseph W. Brown, Fort Edward, N.Y., of Certificates Nos. MC 113156 Sub 1 and MC 113156

Sub 3, issued December 15, 1952 and May 12, 1954, respectively, to Donald F. Bromley and William H. Bromley, a partnership, doing business as William H. Bromley & Son, Hudson Falls, N.Y., authorizing the transportation of: Concrete blocks, over irregular routes, from Hudson Falls, N.Y., to points in Vermont and New Hampshire, Concrete pipe, from the Town of Moreau, Saratoga County, N.Y., to points in Massachusetts, and Vermont within 150 miles of the Town of Moreau. Robert V. Gianniny, 25 Exchange Street, Rochester, N.Y., attorney for applicants.

No. MC-FC 64608. By order of November 17, 1961, the Transfer Board approved the transfer to Arthur B. Bjornson doing business as Bjornson Truck Service, Ellsworth, Wis., of Certificates Nos. MC 5019 and MC 5019 Sub 1, issued September 28, 1949 and March 24, 1948, respectively, to A. C. Bjornson and Arthur B. Bjornson, a partnership, doing business as Bjornson Truck Service, Ellsworth, Wis., authorizing the transportation of agricultural commodities and feed, over irregular routes, between points in the villages of Elmwood, Spring Valley, and Ellsworth, Wis., on the one hand, and, on the other, Minneapolis, St. Paul, South St. Paul, and Red Wing, Minn.; livestock, agricultural commodities, farm machinery, lumber, logs, firewood, feed, seed, and groceries, between points in the towns of El Paso, Gilman, Rock Elm, Ellsworth, Martell, and Spring Lake, Pierce County, Wis., not including the villages specified above, on the one hand, and, on the other, Minneapolis, St. Paul, South St. Paul, and Red Wing, Minn.; malt beverages, over regular routes, from Duluth, Minn., to Ellsworth, Wis., and empty containers, on return, with no service authorized to or from intermediate points; and livestock, over irregular routes, from South St. Paul, Minn., to Whitehall, Wis. William E. McEwen, 101 Tremont Building, River Falls, Wis.

No. MC-FC 64616. By order of November 17, 1961, the Transfer Board approved the transfer to E. R. Collins, doing business as E. R. Collins Trucking Co., 1508 Franklin Avenue, Houston, Texas of Certificate No. MC 117989 issued November 28, 1960 to G. E. Lockley, 1308 Cottonwood Street, Houston, Texas, authorizing the transportation of bananas over irregular routes, from Galveston, Tex., to Monroe, La., Little Rock, Ark., and points in Texas; and from New Orleans, La., to points in Texas.

No. MC-FC 64627. By order of November 21, 1961, the Transfer Board approved the transfer to James Trucking Co., a corporation, Pittsburgh, Pa., of Certificate No. MC 34623, issued November 4, 1960 to Rodney G. James, Pittsburgh, Pa., authorizing the transportation over irregular routes of glassware between Fairmont, W. Va., and Pittsburgh, Pa., elevator machinery and equipment used or useful in the installation or removal of elevator machinery, between Pittsburgh, Pa., on the one hand, and, on the other, points in Ohio, West Virginia, and Maryland; and chemicals, between Pittsburgh and Natrona, Pa., on the one hand, and, on the other, points in Ohio and West Virginia. Arthur J. Diskin, 302 Frick Building,

Pittsburgh 19, Pa., attorney for applicants.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 61-11323; Filed, Nov. 29, 1961;
8:49 a.m.]

[Rev. S.O. 562, Taylor's I.C.C. Order 136;
Amdt. 3]

RUTLAND RAILROAD CORP.

Rerouting or Diversion of Traffic

Upon further consideration of Taylor's I.C.C. Order No. 136 (Rutland Railroad

Corporation) and good cause appearing therefor:

It is ordered, That: Taylor's I.C.C. Order No. 136 be, and it is hereby amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date*. This order shall expire at 11:59 p.m., December 31, 1961, unless otherwise modified, changed, suspended or annulled.

It is further ordered, That this amendment shall become effective at 11:59 p.m., November 30, 1961, and that this

order shall be served upon the Association of America Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement, and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1961.

INTERSTATE COMMERCE
COMMISSION,
CHARLES W. TAYLOR,
Agent.

[SEAL]

[F.R. Doc. 61-11324; Filed, Nov. 29, 1961;
8:49 a.m.]

CUMULATIVE CODIFICATION GUIDE—NOVEMBER

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and
Conservation Service

[7 CFR Parts 1015, 1035]

[Docket No. AO-324]

MILK IN WESTERN NORTH DAKOTA AND MINNESOTA-NORTH DAKOTA MARKETING AREAS

Decision on Proposed Marketing Agreements and Orders

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), a public hearing was held at Fargo and Minot, North Dakota, on July 12-20, 1960, pursuant to notice thereof issued June 20, 1960 (25 F.R. 5778), upon proposed marketing agreements and orders regulating the handling of milk in the Western North Dakota and Minnesota-North Dakota marketing areas.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Under Secretary, United States Department of Agriculture, on August 22, 1961 (26 F.R. 8012; F.R. Doc. 61-8176), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions thereto.

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the proposed marketing areas is in the current of interstate commerce, or directly burdens, obstructs or affects interstate commerce in milk or its products;
2. Whether marketing conditions show the need for the issuance of milk marketing agreements or orders which will tend to effectuate the policy of the Act; and
3. If orders are issued what the provisions should be with respect to:
 - (a) The scope of regulation;
 - (b) The classification and allocation of milk;

(c) The determination and level of class prices;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

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) *Character of the commerce.* All milk to be regulated by the proposed marketing agreements and orders is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk and its products.

The marketing area specified in the proposed order, hereinafter referred to as the Western North Dakota marketing area, includes all the territory within the North Dakota counties of Bottineau, Burke, Burleigh, Divide, Logan, McHenry, McKenzie, McLean, Mountrail, Renville, Sheridan, Ward, and Williams; and within the city of Mandan, North Dakota.

The marketing area specified in the proposed order, hereinafter referred to as the Minnesota-North Dakota marketing area, includes all the territory within the Minnesota counties of Becker, Clay, Douglas, Grant, Kitson, Mahanomen, Marshall, Norman, Ottertail, Pennington, Polk (except that portion of Polk County lying east of U.S. Highway No. 59), Pope, Red Lake, Stevens, Todd, Traverse, Wadena, and Wilkin; and within the North Dakota counties of Barnes, Benson, Cass, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, LaMoure, Nelson, Pembina, Pierce, Ramsey, Ransom, Richland, Rolette, Sargent, Steele, Stutsman, Towner, Traill, Walsh, and Wells.

Milk handled in the marketing areas moves in many forms over state lines. Milk processed and packaged by Minnesota handlers is a substantial proportion of the total route distribution in the North Dakota section of both recommended marketing areas. Likewise, there is extensive distribution in the Minnesota counties of the Minnesota-North Dakota marketing area from North Dakota plants of handlers who would be regulated by that order.

On the procurement side, plants which would be subject to the orders regularly receive milk from farms in Minnesota, North Dakota and South Dakota. Some plants also receive supplemental milk supplies from more distant points, including shipments to North Dakota and Minnesota handlers from plants in Wisconsin and to North Dakota handlers in both marketing areas from plants in Minnesota.

When the supply of producer milk is in excess of local requirements for fluid use, substantial quantities of milk and cream are used locally for manufacturing purposes or shipped from the plants of handlers who would be regulated by the proposed orders to manufacturing plants at other locations. These various outlets manufacture such dairy products as ice cream mix, butter and nonfat dry milk. A substantial portion of such milk products are moved over a wide area in the stream of interstate commerce.

2. *Need for an order.* Marketing conditions in the Western North Dakota and the Minnesota-North Dakota marketing areas justify the issuance of marketing agreements and orders.

There is no over-all plan whereby farmers supplying milk to these marketing areas are assured of payment for their milk in accordance with its use. In some segments of the area there is no procedure whereby farmers may participate in price determinations necessary for the marketing of their milk which, because of its perishability, must be delivered to the market as it is produced.

A certain amount of reserve milk in excess of the actual trade sales is necessary to assure an adequate supply of milk at all times. Fluctuations brought on by the seasonal nature of milk production, together with a relatively uniform level of consumption, necessitate the disposition of some of the Grade A milk produced for the market into manufacturing channels. The excess milk must be manufactured into butter, nonfat dry milk, frozen dessert mix, and similar products and sold in competition with products from ungraded milk.

Milk disposed of to manufacturing outlets returns considerably less than that marketed for fluid use. Consequently, a well defined and uniformly

applied plan of use classification, with the proper pricing of milk in such uses, is necessary to prevent such excess milk from depressing the market price of all Grade A milk. To be successful the classification of and payment for milk in accordance with its use requires the full participation of all those engaged in marketing milk in these markets. Orderly marketing of the milk produced for fluid consumption requires uniformity of pay prices by handlers and a means whereby the lower average returns resulting from surplus milk may be shared equitably among producers.

The problems of unstable marketing encountered by producers in the Western North Dakota and Minnesota-North Dakota marketing areas are not uncommon in fluid milk markets. The problems which have resulted in unrest and instability in these areas are similar to those characteristic of the fluid milk industry in the absence of regulation or a well-defined classified pricing plan. Marketing orders as herein proposed will promote orderly marketing by assuring producers prices equivalent to those contemplated under the Act.

The buying practices of various handlers in the markets have caused instability in the marketing of milk. Prices paid farmers for milk for fluid use have frequently been below the Class I prices an order would provide. Many producers have no means of ascertaining how their milk is utilized at the plants to which they deliver or whether the basis on which they are paid will be revised. Payment of surplus prices by handlers for milk which producers believe was needed in the market for fluid consumption is one of the causes of instability and uncertainty in the production areas of the markets.

Approximately 20 handlers who would be regulated by the proposed Western North Dakota order receive milk from about 300 Grade A dairy farmers. There are about 50 handlers who would be regulated under the Minnesota-North Dakota order, as proposed, and they purchase from approximately 1,500 dairy farmers. The basis on which these dairy farmers are paid for their milk varies widely and generally is not related directly to the utilization at the plants which receive their milk.

A cooperative association of producers receives milk at its plant in Fargo from about 420 Grade A producers. It operates wholesale and retail routes and ships supplemental supplies of milk to handlers over a wide area during periods of short supply. Milk in excess of fluid requirements is utilized by the cooperative at its plant in the production of cottage cheese, ice cream, butter and nonfat dry milk. During 1959, the average utilization for Class I purposes at this plant was 25.7 percent of its Grade A receipts and for the first 5 months of 1960 was 28.2 percent.

Producers delivering to this plant are paid a flat price for all their milk, which reflects the use made of milk during the month. During 1959 its pay price per hundredweight for milk containing 3.5 percent butterfat averaged \$3.56, ranging from \$3.42 to \$3.75. For the first

5 months of 1960 these monthly pay prices averaged \$3.42.

It is not uncommon for handlers to use the pay prices of major cooperative associations in the marketing areas as a basis for paying their producers. The milk utilized by many such handlers is predominantly for Class I purposes, although their pay prices reflect the relatively low Class I utilization ratios of the producer associations, who bear the burden of surplus in the market.

The stated base and excess prices paid producers are generally at the option of the handler and not meaningful. A producer's base is often changed without his being aware of it and arbitrary methods have been used in some instances in arriving at the percentage of milk to be paid for at the base price. Under these conditions, payment to a producer at the excess or surplus price for some of his milk does not indicate that such milk was not used for fluid purposes since no means are available to ascertain the actual utilization of milk by such handlers.

Some handlers follow the practice of maintaining a regular supply of milk from dairy farmers during the flush production months which is close to their Class I sales. During other months, when production is relatively short in relation to Class I demand, these handlers rely on other handlers as well as other markets for supplemental supplies.

Efforts by the cooperative associations to stabilize marketing conditions in the proposed marketing areas have not been successful. Producers contend that only a device such as a Federal milk marketing order can bring about orderly marketing and stability in the sales areas served by their buying handlers.

There is a lack of detailed market information relative to the procurement of milk for and disposition of milk throughout both marketing areas. Such information is essential to the effectuation of orderly marketing. Some data on receipts and utilization of milk for fluid and manufacturing uses were made available for the hearing by various handlers and cooperative associations. However, these data are incomplete with regard to the overall receipts and utilization of milk and milk products in the region. The institution of regulation would provide the basis for complete information on receipts and utilization of milk from producers.

The issuance of marketing agreements and orders for the Western North Dakota and the Minnesota-North Dakota marketing areas would contribute substantially to the improvement of many of the conditions complained of and would tend to effectuate the declared policy of the Act. The adoption of classified price plans based on the audited utilization of handlers would provide a uniform system of minimum prices to handlers for milk purchased from producers and a fair division among producers of the proceeds from the sale of their milk. The procedures required by the Agricultural Marketing Agreement Act would afford all interested parties the opportunity to take part in

determining, through public hearing, what the various provisions of the orders should be.

3. (a) *Scope of regulation.* It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the orders. This can best be accomplished by providing specific definitions to describe the areas involved and to prescribe the categories of persons, plants, and milk products to which the applicable provisions of the orders relate.

Marketing area. The Western North Dakota marketing area should include all the territory within the North Dakota Counties of Bottineau, Burke, Burleigh, Divide, Logan, McHenry, McKenzie, McLean, Mountrail, Renville, Sheridan, Ward, and Williams; and within the city of Mandan, North Dakota.

The Minnesota-North Dakota marketing area should include all the territory within the Minnesota counties of Becker, Clay, Douglas, Grant, Kittson, Mahanomen, Marshall, Norman, Otter Tail, Pennington, Polk (except that portion east of U.S. Highway No. 59), Pope, Red Lake, Stevens, Todd, Traverse, Wadena, and Wilkin; and within the North Dakota counties of Barnes, Benson, Cass, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, La Moure, Nelson, Pembina, Pierce, Ramsey, Ransom, Richland, Rolette, Sargent, Steele, Stutsman, Towner, Traill, Walsh, and Wells.

The preliminary 1960 census population of the contiguous 56-county area and the city of Mandan was 855,000. Western North Dakota had a population of approximately 195,000 and the Minnesota-North Dakota area about 660,000. Because a significant portion of the sales of fluid milk products by handlers who would be regulated is in rural communities and because of the relative density of population immediately surrounding the various cities, the marketing areas should be defined insofar as is practicable on the basis of county rather than city boundaries.

Grade A milk products sold for fluid consumption throughout the proposed marketing areas must be approved by health authorities who are governed by health ordinances, practices and procedures patterned after the United States Public Health Milk Ordinance and Code. Grade A milk, both in bulk and packaged form, moves between various locations in the marketing areas with the reciprocal approval of the responsible health authorities. Ratings by the United States Public Health Service are recognized as a basis for approval of outside sources of milk.

The preliminary 1960 census population of Fargo, North Dakota, the largest city in the two proposed marketing areas, was 47,000. Other North Dakota cities with populations in excess of 10,000 are Grand Forks (34,000), Minot (31,000), Bismarck (28,000), Jamestown (15,000), Williston (12,000), and Mandan (11,000). The largest Minnesota cities in the Minnesota-North Dakota marketing area are Moorhead (23,000) and Fergus Falls (14,000).

There is no single principal point from which producer milk is processed and

packaged for distribution throughout the two marketing areas. Handlers with plants in various cities compete extensively throughout the proposed marketing areas. The use of centralized processing and packaging operations together with strategically located distribution points and vendors makes this pattern of competition of considerable importance in defining the marketing areas.

A single order was proposed for a contiguous 59-county area in Minnesota and North Dakota. This would not be practicable because of the different marketing conditions in Western North Dakota as compared to the eastern portion of the proposed marketing area. The intent of the Act would be best effectuated by providing for two separate orders as herein set forth.

Although handlers who would be regulated by the proposed Minnesota-North Dakota order distribute some packaged fluid milk products in the recommended Western North Dakota marketing area, the major portion of the supply for that area is produced locally. Handlers in Western North Dakota are supplied primarily by nearby producers, maintain proportionately high Class I utilizations and their principal distribution is concentrated in the 13-county Western North Dakota marketing area. This is an area of low population density and is relatively isolated from major milk production areas.

The Minnesota-North Dakota marketing area, which is relatively more densely populated than Western North Dakota, includes and is adjacent to heavy milk production areas. It is served by a number of handlers who distribute over a much wider area than do the Western North Dakota handlers. Adequate milk supplies are more readily obtainable by these handlers throughout the year and their proportionate Class I utilization of producer milk is significantly less than that in the Western North Dakota market.

An estimated 70 handlers distribute in the recommended marketing areas, about 20 in the Western North Dakota area and 50 in the Minnesota-North Dakota area. Five of these, (Cass Clay Creamery, Inc., Fairmont Foods Company, Fergus Dairy, Foremost Dairies, Inc., and Land O' Lakes Creameries, Inc.) receive milk from about 1,150 of the approximately 1,800 Grade A dairy farmers supplying handlers who would be regulated by the proposed orders. The aggregate sales area of these five handlers includes the 56 Minnesota and North Dakota counties and the city of Mandan, which are recommended herein for inclusion in the marketing areas.

From the Fairmont Foods Company plant in Moorhead, Minnesota, fluid milk products are distributed in 44 counties of the recommended marketing areas, ranging from Stevens County, Minnesota to Divide County, North Dakota, a distance of about 500 miles.

From the Cass Clay Creamery plant at Fargo, fluid milk products are distributed in 9 Minnesota and 13 North Dakota counties of the Minnesota-North Dakota marketing area.

Fergus Dairy, a cooperative with processing plants at Alexandria and Fergus Falls, Minnesota, distributes fluid milk products in 13 Minnesota and 5 North Dakota counties of the recommended Minnesota-North Dakota marketing area. In addition, it packages fluid milk products at these locations for affiliated cooperative associations and other handlers for route distribution over a wide territory in the recommended marketing areas. Fergus Dairy also supplies substantial quantities of fluid milk products in bulk to a number of other handlers, some on a regular basis and others as a supplemental supply source.

Foremost Dairies, Inc., from its processing plants at Jamestown and Mandan, North Dakota, distributes fluid milk products in 15 counties in the recommended marketing areas.

Land O' Lakes Creameries, Inc. has extensive distribution of fluid milk products from its processing plants in Crookston and Thief River Falls, Minnesota, and Grand Forks and Minot, North Dakota. In addition, it has distribution points at Devils Lake, Grafton, Jamestown and Williston, North Dakota. Milk received at the four plants of this producer association is distributed on routes in 48 counties in the recommended marketing areas.

The above-mentioned five handlers, compete with one another at numerous locations and compete extensively throughout the recommended marketing areas with the large number of handlers whose sales areas are geographically more limited.

Fairmont Foods competes with Fergus Dairy, Land O' Lakes or both in all but five (Douglas, Kittson, Pennington, Pope, and Todd) of the 18 Minnesota counties in the recommended Minnesota-North Dakota marketing area. Both Land O' Lakes and Fergus Dairy compete for sales in Douglas County. More than half of the fluid milk products distributed in each of Kittson and Pennington Counties is from Land O' Lakes plants. Fergus Dairy is the principal distributor in Pope and Todd Counties.

There are little or no fluid milk sales in that part of Polk County east of U.S. Highway 59 by handlers who would be regulated by the Minnesota-North Dakota order. Including this territory in the marketing area would bring under regulation a handler in Fosston, Minnesota, who otherwise does not compete with handlers who would be regulated by the proposed order. Accordingly, this eastern portion of Polk County should not be included in the Minnesota-North Dakota marketing area.

A substantial part of the distribution in Big Stone County emanates from the plant of a handler in Montevideo (in Chippewa County) who sells practically no fluid milk products in any other counties considered for inclusion in the marketing area. Moreover, there is no significant competition in Big Stone County between this handler and any other handler who would be regulated by the order. In view of these considerations, Big Stone County, Minnesota, should not be included in the Minnesota-North Dakota marketing area.

Of the 38 North Dakota counties recommended to be included in the marketing areas, Land O' Lakes has distribution in all but 4, Burleigh, Kidder, Sheridan, and Wells. Fairmont Foods competes with Land O' Lakes in 29 North Dakota counties in the recommended marketing areas (Barnes, Benson, Bottineau, Cass, Cavalier, Dickey, Divide, Eddy, Foster, Grand Forks, Griggs, La Moure, Logan, McHenry, McLean, Nelson, Pierce, Ramsey, Ransom, Richland, Rolette, Sargent, Steele, Stutsman, Towner, Traill, Walsh, Ward, and Williams). Fluid milk products from the plants of Cass Clay, Fergus Dairy or both are sold in 14 of these counties.

Handlers from Minot (Ward County) are major distributors in Burke, McKenzie, Mountrail and Renville Counties. Except for a few relatively small handlers the principal competition of the Minot handlers in these counties is from handlers who would otherwise be regulated by reason of their sales elsewhere in the Western North Dakota marketing area.

About 85 percent of the milk distributed in Pembina County is from the Grand Forks plants of Land O' Lakes and Minnesota Dairy. Most of the remaining distribution of fluid milk products in the county is from the plant of Grafton Milk Company at Grafton (Walsh County).

Foremost Dairies from its plant at Jamestown competes with Cass Clay, Fairmont Foods and Land O' Lakes in Barnes, Dickey, Eddy, Foster, Griggs, La Moure, and Stutsman Counties, and with Fairmont Foods and Land O' Lakes in McHenry County. Of the 4 North Dakota counties in the recommended marketing areas in which Land O' Lakes has no distribution, Foremost Dairies of Jamestown competes with Fairmont Foods in two, Sheridan and Wells.

In Kidder County, approximately 50 percent of the fluid milk products distributed are from the Foremost Dairies' Jamestown plant. The principal remaining distribution in Kidder County is from a plant in Bismarck (Burleigh County), from which fluid milk products are distributed through chain stores in this county and a number of other counties in Western North Dakota.

About 65 percent of the distribution in Burleigh County is by the Bismarck handler and the remainder is from the Foremost Dairies plant at Mandan. This latter plant distributes, in competition with Fairmont Foods and Land O' Lakes, about 15 percent of the total sales in Ward County, which is 12 percent of the total distribution from this plant. In addition, some 30 percent of the total sales in Logan and McLean Counties, which represents an estimated 6 percent of this plant's total distribution, is sold in competition with Fairmont Foods and Land O' Lakes.

If Burleigh and Kidder Counties and the city of Mandan were not included in the Western North Dakota marketing area, it might be reasonably expected that the Foremost plant at Mandan would be regulated because of sales in Logan, McLean and Ward Counties. However, if Burleigh and Kidder Coun-

ties were excluded from the marketing area, the Mandan handler would be at an economic disadvantage because all milk sold from his plant would be subject to pricing under an order while sales in Burleigh and Kidder Counties and the city of Mandan by any unregulated handler would not be subject to order prices.

In the course of operation of orders, the question may arise as to whether any territory within the boundaries of the designated marketing areas which is occupied by Government (Municipal, State, or Federal) reservations, installations, institutions, or other establishments shall be considered as within the marketing areas. No proposal was made to exempt sales by a handler in any territory or to any agency from the provisions of the orders and no evidence was presented at the hearing which would justify such exemption. However, so that there will be no doubt as to the intent of the application of the marketing area definition in the proposed orders, the designated counties in the recommended Western North Dakota and Minnesota-North Dakota marketing areas shall include territory wholly or partly within such counties which is occupied by Government (Municipal, State, or Federal) reservations, installations, institutions, or other establishments.

Definition of plants. The minimum class prices of the orders should apply to that milk eligible for distribution as Grade A milk which is received from dairy farmers at plants primarily engaged in supplying fluid milk products for sale on retail and wholesale routes in the marketing areas. Such plants would be defined as "pool plants".

The basis for determining which plants shall be pool plants under the orders, and thereby fully subject to regulation, should be clearly set forth and apply uniformly to all plants, wherever located. Pool plant status should not be determined solely on an occasional shipment of milk or an approval by specified health authorities. Such a method for determining which plants shall be subject to regulation would not provide a workable basis for administering orders for the Western North Dakota and Minnesota-North Dakota marketing areas.

The production of high quality milk involves extra expense. It is important that the amount of milk produced for these markets under Grade A inspection be no more than that necessary to provide an adequate and dependable supply of quality milk. To encourage excessive production would represent an economic waste, since the expenditure involved in producing Grade A milk not needed on the markets would result in no extra value to producers.

Essential to the operation of an order is the establishment of performance standards to apply uniformly to all plants. Any plant, regardless of its location, should have equal opportunity to comply with the standards of regulation and have its producers share in the available Class I sales. Whether or not plants and producers choose to supply the Western North Dakota and Minnesota-North Dakota order markets will

depend on the economic circumstances with which they are confronted, such as prices, transportation costs, and alternative outlets.

Performance standards should be such that any plant which supplies a substantial proportion of its Grade A receipts to the Western North Dakota or Minnesota-North Dakota market would pool its sales and share in the market-wide equalization. On the other hand, plants only casually, or incidentally associated with either order market should not be subject to complete regulation for such market. Neither should they be permitted or required to equalize their sales with all plants in that market. If a milk plant were to be permitted to share on a pro rata basis the Class I utilization of an entire market without being genuinely associated with the market, then the differentials paid by users of Class I milk could be dissipated without accomplishing their intended purpose. If a plant were to be qualified and fully regulated merely by making a token shipment of milk or cream into a market for sale as Class I milk, then any milk plant which found itself in a position where it was selling a smaller share of its milk in Class I than the average for all regulated handlers might make such shipment and receive equalization payments from the pool. The only qualification such a plant would be required to meet would be compliance with the necessary health department standards.

Since reserve milk is an essential part of any fluid milk business, there will always be some excess milk in the plants of handlers supplying other markets. This will be particularly true in the months of flush production. Plants selling primarily to other markets, or plants shipping milk on an opportunity basis to any market where supplies happen to be short, do not represent dependable sources of milk supply.

If such a plant, by selling a token quantity of Class I milk in the western North Dakota or Minnesota-North Dakota marketing area, were allowed to pool its surplus, the operator thereof could gain an unwarranted advantage in paying producers by receiving equalization payments from an order pool. Such a distribution of equalization payments would, in fact, reduce the blend price to producers regularly supplying a market, thereby having an adverse effect on the milk supplies upon which such market depends. This could result in the need for higher Class I prices than would otherwise be required to supply that market adequately.

Because of the difference in marketing practices and functions between distributing plants and supply plants, separate performance standards have been provided for them. A "distributing plant" under the orders would be defined as a plant in which any Grade A fluid milk product is packaged and disposed of during the month on routes in the marketing area. "Supply plant" would be defined to mean a plant from which milk, skim milk or cream is shipped during the month to a distributing plant which is qualified as a pool plant.

The term "route" would mean the delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I to a retail or wholesale outlet other than a milk plant or a distribution point.

Fluid milk products may be moved from a milk plant to a facility such as a warehouse, loading station or storage plant. The distribution from such latter point would be considered a route distribution from the milk plant. To do otherwise would be inappropriate because it would consider the disposition of fluid milk products to have been made at the temporary storage facility instead of at the location at which such products are received by retail and wholesale purchasers.

In order to qualify as a pool plant under the Western North Dakota or Minnesota-North Dakota order, a distributing plant should be required to distribute at least 15 percent of its milk from producers and other plants during the month as Class I milk on routes in the respective marketing area.

A distributing plant having more than 85 percent of its business outside the marketing area of a specified order or in other outlets should not be considered as essentially associated with the order market. It is not considered advisable to bring such a plant under full regulation because of the minor share of its business in the marketing area. Full regulation in such case would not be necessary to accomplish the purposes of an order, and might well place such plant at a competitive disadvantage in supplying the unregulated market. Such minimum is necessary also to avoid the possibility that a plant otherwise not associated with a market might qualify itself for equalization payments to its own advantage, and to the disadvantage of the market, by means of minor sales in the marketing area.

It is contemplated that only plants primarily engaged in route distribution of fluid milk products should be qualified as pool plants under this definition. In order to preserve this distinction, a further condition should be placed on a distributing plant. This is that its route distribution of Class I milk (both inside and outside the marketing area) and Class I transfers to other plants must amount in any month of July through February to not less than 35 percent and in the seasonally high production months of March through June to not less than 30 percent of its receipts of Grade A milk from dairy farmers and from other plants. Any plant which does not qualify on this basis should be deemed to be primarily a supply plant and its pool status should be judged by the standards applied to such plants.

Many plants in the proposed marketing areas are exclusively Class I operations and handle no reserve milk. Several plants receiving substantial quantities of milk from dairy farmers currently carry a disproportionate share of the burden of reserve milk produced for the markets. These plants maintain manufacturing facilities for utilizing

the reserve supplies of milk when not needed for Class I purposes. There is some question whether all such plants could at the outset of the orders meet the Class I percentage requirements for pool plant status herein recommended.

Initial regulation in a market generally precipitates some adjustment by handlers in their procurement practices to obtain a better year-round balance between supplies and Class I sales, including reserves. In these markets some re-allocation of supplies may be expected with milk tending to move from low Class I utilization handlers to those who now handle little or none of the reserve. Such re-allocation would be facilitated by the marketwide pooling provisions of the proposed orders.

From the effective date of the orders until September 1, 1962 the route distribution of Class I milk (inside and outside the marketing areas) and Class I transfers to other plants should be not less than 25 percent of Grade A receipts from dairy farmers and from other plants for a distributing plant to qualify as a pool plant. This would provide handlers a reasonable period to make the necessary adjustments in their procurement practices and to accommodate their operations to meet the pool plant requirements which would then become effective.

A plant from which milk for Class I uses is distributed regularly in a marketing area under normal circumstances may be expected to dispose of its milk in such a way as to exceed by a reasonable margin the minimum performance standards necessary to qualify as a pool plant. There may be from time to time plants supplying milk to a marketing area which would not qualify for pool status. Such plants should be required to file reports, make available their records for audit by the market administrator, and be subject to payments hereinafter discussed if they are not fully subject to regulation.

The performance standards for supply plants to qualify for pool plant status should reflect the fact that currently the quantity of milk produced for the Western North Dakota and Minnesota-North Dakota marketing areas are adequate on an annual basis for their needs. At times, especially during the months of seasonally high production, distributors in the market may not need all of the milk available from producers in order to keep their Class I outlets fully supplied. In order to assure that all the producers' milk which is pooled will be available for Class I, supply plant standards should be set at levels which require that such milk will be available.

In order to qualify for pool plant status a supply plant under the Western North Dakota or Minnesota-North Dakota order should ship to distributing plants which are pool plants under such order at least 35 percent of its receipts of milk from dairy farmers in any month in the form of fluid milk products. A supply plant from which a proportionately lesser quantity of milk is disposed of in this manner should not, under the present conditions in these order markets, be considered as pri-

marily associated with such order market.

It is recognized that if there is any demand for milk from supply plants it will be greatest during the season of low production. For sustained periods during the months of flush production, supplies of milk received at local plants may be sufficient to supply the Class I outlets. During this part of the year, it would be more economical to leave the most distant milk in the country for manufacture, and use local supplies for Class I use. The performance provisions should not force milk to be transported to distributing plants in the months of seasonally high production in order to maintain the eligibility of supply plants to pool.

To avoid this, provision should be made whereby a supply plant may elect to receive pool plant status during the months of seasonally high production. Such election would be available to a plant when it had supplied a substantial portion of its producer milk to distributing plants in the market during each of the immediately preceding months of seasonally low production. This would be accomplished by providing that a supply plant which shipped 50 percent of its producer milk receipts during each of the immediately preceding months of September through November to distributing plants which are pool plants would thereby earn pool plant status for the months of March through June. As herein proposed, pool plant status for the months of March through June would automatically accrue to such supply plant unless the operator of such plant notified the market administrator that he elected to have nonpool status for such plant beginning with any of the months during the March through June period.

A plant which would have qualified on the basis of 50 percent shipments in each month of September through November 1961 should be allowed pool plant status during each month of March through June 1962 unless the operator notifies the market administrator that he elects nonpool status for the plant.

A pool plant or a distributing plant which is not a pool plant should be defined as a "fluid milk plant", thereby including in one designation all plants for which reports are required to be submitted to the market administrator. Such a definition will enable the market administrator to use the same report forms for all distributing plants, both pool and nonpool. In addition, it will facilitate formulating the language in the various order provisions as they apply to such plants, especially with respect to those distributing plants which are not pool plants.

Some handlers receive milk from both Grade A and ungraded producers. Where such an operation takes place, it is generally the practice of the handler to maintain the ungraded operation physically apart from that of his Grade A operation. The handler who operates an ungraded plant which is in the adjoining or same building as his Grade A plant should not be restricted in the operation of his ungraded plant to any

greater degree than the operator of any other ungraded plant. However, proper safeguard should be provided in the orders to insure that the ungraded and graded portions of a plant operated by the same handler are maintained as separate entities. It is concluded, therefore, that if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it should not be considered a part of a pool plant. However, if the graded and ungraded operations of a plant are not maintained separately, the entire operation of such plant would be considered as that of a pool plant, and all ungraded milk received at such plant would be considered as other source milk received at a pool plant.

Some milk may be distributed in the marketing areas from plants which are fully subject to the classification and pricing provisions of other Federal milk marketing orders. It is not necessary to extend full regulation under an order to such plants which dispose of a major portion of their receipts in another regulated marketing area. To do so would subject such plants to duplicate regulation. However, in order that the market administrator may be fully apprised of the continuing status of such a plant, the operator thereof should, 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.

Handler. Handler should be defined as any person in his capacity as the operator of one or more fluid milk plants. The definition should also include any cooperative association with respect to producer milk diverted for the account of such association from a pool plant to a nonpool plant.

A handler is the person who receives Grade A milk from dairy farmers and who is responsible for reporting the receipts, utilization and payment thereof. A cooperative association which markets the milk of its members may for short periods of time need to divert such milk from a pool plant to a nonpool plant. If the association is defined as a handler for such milk, even though it has no plant, the producers whose milk is so diverted will continue to receive the uniform price under the order and their production will be available to the market for fluid use when needed.

A handler operating more than one pool plant or a nonpool distributing plant should be required to report separately for each plant so that its pool plant status can be determined each month by the market administrator. If a handler operates a plant not associated with the regulated market, he would not be a handler with respect to such plant.

Producer. Producer should mean any person, except a producer-handler, who produces milk in compliance with the Grade A inspection requirements of a

duly constituted health authority, which milk is received at a pool plant.

Fluid milk products. Fluid milk product should mean milk, skim milk, buttermilk, flavored milk, flavored milk drinks, sweet or sour cream disposed of as such, or any mixture of skim milk and cream (except aerated cream products, eggnog, ice cream mix, frozen dessert mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed metal containers). The items designated as fluid milk products pursuant to this definition are those products which when disposed of by handlers are considered as Class I milk.

Producer milk. Producer milk should be defined as all skim milk and butterfat contained in milk received at a fluid milk plant directly from Grade A dairy farmers or diverted from a fluid milk plant to a nonpool plant.

It would be inappropriate to consider as producer milk any milk moved from a farm directly to a plant subject to the classification and pricing provisions of another order issued pursuant to the Act. Diversion to such plants, if permitted, could result in the pricing and pooling of the same milk under two orders.

Milk transferred to a fluid milk plant from the plant of another handler should not be included in the producer milk definition. When receipts at a shipping plant are from Grade A dairy farmers and from other sources, the milk is commingled and it cannot always be ascertained whether the milk being moved is that from Grade A dairy farmers, from other sources or both.

When milk is not needed in the market for Class I purposes, the movement of such milk to a nonpool plant for manufacturing purposes should be facilitated. Allowing for unlimited diversion during those months when reserve supplies of milk are heaviest will contribute to this end. Unlimited diversion is neither necessary nor desirable under a marketwide pool during the other months of the year when milk regularly associated with the market is needed to supply the Class I needs of the market. It is necessary, however, to provide for limited diversion during such months to enable handlers to divert producer milk on such occasions as weekends or holidays when the milk is not needed in the market for Class I purposes.

The recommended orders should provide that producer milk regularly received at a fluid milk plant may be diverted for the account of a handler to a nonpool plant at any time during the flush production months and retain producer milk status under the order. In other months such producer milk status for diverted milk should be limited to a quantity not greater than the quantity of producer milk that was delivered to a fluid milk plant from such farm. Diverted milk should be deemed to have been received at the plant from which it was diverted.

Other source milk. Other source milk should be defined as all skim milk and butterfat contained in or represented by fluid milk products utilized by the handler in his operations except producer milk, fluid milk products received from

pool plants, and inventory at the beginning of the month. Thus, other source milk would represent skim milk and butterfat which are not subject to the pricing provisions of the applicable order during the month. It would include all milk products from plants other than pool plants and all manufactured dairy products from any source which are reprocessed or converted into another product during the month. It would include those manufactured products from a plant's own production which are made and are reprocessed or converted into another product during the same or a later month.

Producer-handler. Producer-handler should be defined as any person who operates a dairy farm and a distributing plant but who, during the month, receives no fluid milk products from other dairy farmers or from sources other than pool plants. The orders are not intended to establish minimum prices for such operators, but they should be required to make reports to the market administrator. Such reports are necessary to make a determination as to whether the operator is a producer-handler and to facilitate accounting with respect to the transfer of milk from other handlers.

The exemption from pricing and pooling of a producer-handler should be limited to bona fide producer-handlers and should not permit other operations masquerading as producer-handlers to abuse the exemption to the detriment of producers and the effectiveness of the order. It is appropriate, therefore, to provide that to maintain producer-handler status the maintenance, care and management of the dairy animals and other resources necessary to produce milk and the processing, packaging and distribution of the milk shall be the personal risk of the person involved. The term producer-handler is not intended to include any person who does not accept responsibility and risk for the operation of the plant in which the milk of his own production is processed and bottled for sale.

Classification provisions of the proposed orders should provide that any milk, skim milk or cream transferred from a pool plant to the plant of a producer-handler will be Class I milk. Any supplemental supplies of milk which may be obtained from such plants may, by virtue of the type of operation involved, be presumed to be needed by the producer-handler for fluid use and should be classified in the supplying handler's plant as Class I milk. A producer-handler may receive milk from pool plants and still maintain his status as a producer-handler. Pursuant to the proposed orders, any milk which a handler receives from the producer-handler would be other source milk and would, therefore, be allocated to the lowest class utilization at the pool plant of a handler after the allocation of shrinkage on producer milk. Milk disposed of to another handler by a producer-handler would normally be surplus to the operation of the producer-handler.

(b) **Classification of milk.** Milk and milk products received by handlers should be classified on the basis of skim

milk and butterfat according to the form in which, or the purpose for which, such skim milk and butterfat was used or disposed of as either Class I milk or Class II milk.

Milk is received by handlers directly from Grade A dairy farmers, from other handlers, and from other sources. Milk from all these sources is commingled in handlers' plants. It is necessary, therefore, to classify all receipts of milk to afford a means to establish the classification of producer milk and to apply the classified price plan.

The products which should be included in Class I milk are those generally required by health authorities in the marketing areas to be obtained from milk or milk products from approved "Grade A" sources. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used in Class I products somewhat above the ungraded or manufacturing milk price. This higher price should be at such a level as will yield a blend price to farmers that will encourage production of enough milk to meet market needs.

Milk not needed for Class I purposes is utilized in the manufacture of various dairy products which are sold in competition with the same products made from ungraded milk. Milk so used should be classified as Class II milk and priced in accordance with its value in such outlets.

In accordance with these standards, Class I milk should comprise all skim milk (including reconstituted skim milk) and butterfat disposed of in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, sweet or sour cream disposed of as such, and any mixture in fluid form of milk or skim milk and cream (except eggnog, ice cream mix, frozen dessert mix, aerated cream products, evaporated or condensed milk, and sterilized products packaged in hermetically sealed metal containers); and skim milk and butterfat not accounted for as Class II milk.

Fluid milk products to which extra skim milk solids have been added, or concentrated milk disposed of for fluid use would be included as Class I milk. Products such as evaporated or condensed milk packaged in bulk or in hermetically sealed metal containers would not be considered as concentrated milk. Any nonfat milk solids added to a fluid milk product should be converted to their fluid skim milk equivalent weight for purposes of accounting for the skim milk required to produce such product.

Class I classification would apply to the skim milk contained in a fluid milk product which is not in excess of the actual weight of such product. The remaining portion of the fluid milk product would represent added skim milk solids and should be classified as Class II milk on a skim milk equivalent basis. It was not shown that nonfat milk solids added to fluid milk products displace producer milk for Class I use in the proposed marketing areas.

All skim milk and butterfat used to produce products other than those classified in Class I milk should be Class II

milk. Included as Class II milk are products such as ice cream, ice cream mix and other frozen desserts; eggnog, aerated cream products; butter, cheese (including cottage cheese); evaporated and condensed milk (plain or sweetened); nonfat dry milk, dry whole milk, condensed or dry buttermilk; and any other products not specified as Class I milk.

The health ordinances applicable in the marketing areas do not require that these products be made from Grade A milk.

Handlers have inventories of milk and milk products at the beginning and end of each month which enter into the accounting for current receipts and utilization. The accounting procedure would be facilitated by providing that month-end inventories of fluid milk products be classified in Class II milk. Such inventories would be subtracted, under the proposed allocation procedures, from any available Class II milk in the following month. The higher use value of any fluid milk products in inventory which are allocated to Class I milk in the following month should be reflected in returns to producers. The attached orders provide for the reclassification of inventories on that basis.

Inventories should include all the skim milk and butterfat in fluid milk products, whether in bulk or in packages. Since the disposition of skim milk and butterfat in nonfluid milk products has been accounted for when used to produce a manufactured dairy product (and classified as Class II milk), such skim milk and butterfat should not be included in inventories.

Inventories of fluid milk products on hand at a plant at the beginning of any month during which such plant becomes a regulated plant for the first time should likewise be allocated to any available Class II utilization of the plant during the month. This will preserve the priority of assignment of current producer milk receipts to current Class I use.

Skim milk which is dumped or sold for livestock feed should be classified as Class II milk. The only trade outlets for surplus skim milk for many handlers are located at considerable distances from their processing plants. Transportation costs are such that it is uneconomical for these handlers to ship relatively small quantities of unneeded skim milk to such outlets.

It would not be practicable to permit in an unlimited manner the dumping of skim milk by pool plant handlers. Neither would it be appropriate to classify such skim milk, for which no better outlet is available, in other than Class II. Accordingly, the orders should clearly specify a Class II classification for skim milk dumped, with a proviso that the market administrator be notified in advance and be afforded the opportunity to verify the dumping.

No provision should be made for classifying as Class II milk the butterfat in fluid milk products which is dumped or disposed of for livestock feed. Butterfat in fluid milk products is generally salvageable, can be accumulated in the form of cream, and adequate outlets are

available for utilizing such butterfat in manufactured dairy products.

Waste and loss of skim milk and butterfat experienced in plant operations are referred to as "shrinkage". Since shrinkage represents disappearance of milk for which the handler must account but for which no direct return is realized, it should be considered as Class II milk to the extent that the amount is reasonable and is not the result of incomplete or faulty records.

The maximum shrinkage allowance in Class II at each plant should be 0.5 percent of the skim milk and butterfat in Grade A milk received from dairy farmers (excluding milk diverted to a nonpool plant) plus 1.5 percent of such receipts and of the receipts of skim milk and butterfat in bulk fluid milk products received from pool plants. Plants which are operated in a reasonably efficient manner and for which accurate records of receipts and utilization are maintained should not have plant losses in excess of the maximums provided. Any shrinkage in excess of the maximums should be classified as Class I milk. This is reasonable and necessary to strengthen the classified pricing plan and will tend to encourage maintenance of adequate records and efficient handling of milk.

To avoid duplicate shrinkage allowance on interpool plant movements of milk, shrinkage should be based on the amount that receipts from other pool plants are in excess of transfers to such plants. No shrinkage should be allowed on milk diverted to nonpool plants. On milk received from Grade A producers at a plant and transferred in bulk to another plant the transferor plant would be limited to the 0.5 percent maximum receiving shrinkage allowance on such milk.

There should be no limitation on the classification of shrinkage of other source milk as Class II milk. It was not shown that such limitation is necessary under the proposed orders to adequately safeguard producer milk priority in Class I milk.

Skim milk and butterfat are not used in most products in the same proportions as contained in the milk received from farmers and, therefore, should be classified according to their separate uses. The skim milk and butterfat content of milk products received and disposed of by a handler can be determined through certain testing procedures. Some products such as ice cream and condensed products present a difficult problem of testing in that some of the water contained in the milk has been removed. It is desirable in the case of such products to provide an acceptable means of ascertaining the amount of skim milk and butterfat used to produce such products. The accounting procedure to be used in the case of any concentrated milk product such as condensed milk or nonfat dry milk should be based on the pounds of milk or skim milk required to produce such product.

Butterfat and skim milk used to produce Class II products should be considered to be disposed of when so used. Handlers will need to maintain stock

records on such products, however, to permit audit of their utilization records by the market administrator. Class II products from any source used in the production of any product, including products in Class I milk, should be considered to be a receipt of other source milk. This will maintain priority of assignment of current receipts of producer milk to Class I utilization.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from dairy farmers should be responsible for establishing the classification of and making payment for such milk. Fixing responsibilities in this manner is necessary to effectively administer the provisions of the orders.

Except for the quantities of shrinkage that may be classified in Class II, all skim milk and butterfat for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage that might accrue to handlers who fail to keep complete and accurate records and to assure that dairy farmers receive payment for their milk on the basis of its use. Accordingly, the burden of proof should be on the handler to establish the utilization of any milk as other than Class I.

Transfers. Classification of butterfat and skim milk used in the production of Class II milk items should be considered to have been established when the product is made. Classification of Class I milk should be established when the butterfat or skim milk is disposed of. However, some Class I items may be disposed of to other plants for Class II use. Classification of any products transferred to another plant should, under certain circumstances, be determined according to its utilization in the plant to which transferred.

Fluid milk products transferred by a handler to a pool plant should be classified as Class I milk unless utilization as Class II milk is claimed for both plants on the reports submitted for the month to the market administrator. However, sufficient Class II utilization must be available at the transferee plant for such assignment after prior allocation of shrinkage and other source milk. Moreover, if other source milk had been received at either or both plants during the month, the skim milk or butterfat in fluid milk products involved in such transfer should be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk at both plants.

Fluid milk products transferred or diverted to a nonpool plant should be classified as Class I milk unless the operator of the nonpool plant, if requested, makes his books and records available to the market administrator for the purpose of verifying the receipts and utilization of milk in such nonpool plant. Provision for verification by the market administrator is reasonable and necessary to insure proper application of the classification procedures prescribed in the orders.

In order to classify such transfers or diversions as Class II milk the fluid milk

products disposed of from the receiving nonpool plant should not exceed the receipts of skim milk and butterfat in Grade A milk received during the month from dairy farmers directly supplying such plant. However, if the fluid milk products disposed of from the receiving nonpool plant exceed the receipts of skim milk and butterfat in Grade A milk from dairy farmers regularly supplying such plant, the difference should be assigned to the fluid milk products transferred or diverted from the regulated plant and classified as Class I milk. If the transfers and diversions to the nonpool plant during the month are from two or more plants subject to the provisions of different orders issued pursuant to the Act, the skim milk and butterfat assigned to Class I milk at each such regulated plant under the Minnesota-North Dakota or Western North Dakota orders should be not less than that obtained by prorating the assignable Class I milk at the nonpool plant over the receipts from all plants subject to the provisions of these and other orders issued pursuant to the Act.

The method herein recommended for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer provision of the orders by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

The provision for classifying fluid milk products as Class II milk should not be extended to include milk, skim milk, and cream transferred or diverted to nonpool plants located more than 150 miles by the shortest highway distance from the nearest of specified locations under each of the orders. The Post Offices of Devils Lake, Fargo, Grand Forks, and Jamestown, North Dakota are appropriate locations under the Minnesota-North Dakota order and Bismarck, Minot, and Williston, North Dakota under the Western North Dakota order. The areas thus described are adequate to dispose of milk, skim milk, and cream not needed by order handlers for Class I purposes. Milk, skim milk, and cream moving greater distances are normally for Class I use.

When milk, skim milk or cream in bulk has been transferred or diverted to a nonpool plant located not more than 150 miles from Devils Lake, Fargo, Grand Forks or Jamestown, under the Minnesota-North Dakota order and Bismarck, Minot, and Williston under the Western North Dakota order, the market administrator is required to verify the utilization claimed by such nonpool plant. It may reasonably be expected that the market administrator will be able to make such verification within such "surplus disposal areas" without

incurring undue expense. Surplus disposal areas larger than that provided herein might tend to make unreasonable demands on the market administrator in connection with the verification of occasional or irregular shipments to nonpool plants located beyond the areas wherein handlers who would be subject to the orders normally dispose of reserve supplies of milk and skim milk for Class II purposes.

As stated elsewhere in this decision, any fluid milk product transferred to a producer-handler should be classified in Class I and should not be subject to reclassification.

Allocation. The orders provide for determining the value of Grade A milk receipts from dairy farmers at a plant each month on the basis of the classification of such milk. It is necessary, therefore, if a plant has other receipts of butterfat or skim milk, to determine the order of assignment of milk from all sources to each classification.

The milk of dairy farmers who are primarily engaged in supplying the market should be given priority in the assignment to the Class I utilization at regulated plants. This is necessary to insure the stability of the classified pricing program of the orders. If the orders permitted handlers to obtain unpriced other source milk for Class I uses whenever it was advantageous to do so while producer milk in the plant was utilized in Class II, the market would be deprived of a dependable supply of milk and the orders would not be effective in carrying out the purpose of the Act.

In general, the allocation procedure requires that skim milk and butterfat, respectively, in each plant be assigned to producer milk after making the following deductions from gross utilization starting with Class II milk, except as otherwise noted:

- (1) Fluid milk products in consumer packages (containers not larger than a gallon) subject to pricing under another order (from Class I);
- (2) Other source milk not subject to Class I pricing provisions of another order;
- (3) Other source milk in bulk subject to pricing under another order;
- (4) Beginning inventory;
- (5) Receipts from other handlers (according to classification); and
- (6) Overage.

The provision to allocate to Class I milk certain packaged fluid milk products subject to pricing under another Federal order will have the effect of giving the same treatment to such items moved from a plant under another Federal order whether distributed directly to consumers in the marketing area from such plant or imported through a plant regulated under the proposed orders.

(c) **Class prices—Class I price.** The price for Class I milk should be computed by adding a differential to a basic formula price.

The method of adding a differential to a basic formula price in determining the Class I price is necessary to give appropriate consideration to the national economic factors underlying changes in the general level of prices for milk and manufactured dairy products. Prices

for milk used for fluid purposes in the recommended marketing areas have a direct relationship to the prices paid for milk used for manufacturing purposes. The market for most manufactured products is nationwide and the prices of these products reflect general economic conditions affecting the supply and demand for milk and changes in the value of manufacturing milk throughout this area.

Differentials over manufacturing prices are necessary to cover the extra costs of meeting quality requirements in the production of market milk and transportation costs to the fluid market, and to furnish the necessary incentive for dairy farmers to produce and deliver an adequate supply of quality milk to meet the demand for fluid consumption.

The Class I price should be established at a level which, in conjunction with the Class II price hereinafter concluded to be appropriate, will result in returns to producers high enough to maintain an adequate, but not excessive, supply of quality milk to meet the requirements of consumers, including the necessary reserves. Class I prices must also be in alignment with those prevailing in other nearby regulated markets and should not be at levels which exceed the cost of obtaining milk of acceptable quality and regular availability from alternative sources.

Proper recognition must be given to the prices at which alternative sources of supply are available, especially since any milk plant wherever located may by meeting the prescribed qualifications become a pool plant under either proposed order. It is necessary, therefore, that the Class I prices in the proposed milk marketing orders should not be set at levels which will bring the cost of such milk above the cost of obtaining regular and dependable Grade A milk supplies from other areas.

Both producers and handlers emphasized in their testimony that the Class I price should be appropriately aligned with the Class I prices in nearby markets, especially with those markets under Federal milk marketing orders. The three orders to which reference was made are Duluth-Superior, Eastern South Dakota and Minneapolis-St. Paul (commonly referred to as the Twin Cities).

There is no overlapping of sales or production areas of the proposed orders with those of the Duluth-Superior order. Although the Eastern South Dakota marketing area is close to some parts of the proposed Minnesota-North Dakota marketing area, there is little, if any, common sales or production areas shared by the two markets.

The buying and selling prices of handlers under the Minneapolis-St. Paul order are important factors in determining the availability of supplies and the prices which will be paid for milk in the Minnesota-North Dakota and Western North Dakota marketing areas. The Twin Cities milkshed is an area of heavy milk production and milk from plants in the milkshed is shipped great distances, principally in bulk. However, some packaged fluid milk products also are moved over a wide area from the plants

of Twin Cities handlers. Such packaged products are shipped regularly from the Fairmont Foods plant in Minneapolis to its distributing plant in Sioux City, Iowa, a distance of 250 miles. This is the approximate road mileage from Minneapolis to Fargo.

The Land O' Lakes plant in St. Michael, Minnesota (a Twin Cities pool plant) has operated as a supplemental source of supply for the Land O' Lakes plant in Thief River Falls. The St. Michael plant, which is a potential source of supply for the proposed marketing areas, is about 210 miles from Fargo.

The Minneapolis-St. Paul order Class I price per hundredweight of milk containing 3.5 percent butterfat is computed by adding a differential to a basic formula price and adding or subtracting a supply-demand adjustment. The basic formula used is the higher of either the average of the prices paid by specified Midwestern condenseries, a butter cheese formula price, or a price based on a butter-powder formula. The Class I differential added to the basic formula price is \$1.00 in July through November and 76 cents in other months, an average of 86 cents on an annual basis. For the 12 months ending May 31, 1960, the Twin Cities' Class I price averaged \$3.92. During this period the Midwestern condensery price was the basic formula in 11 months and the butter-powder formula in one month. The average effect of the supply-demand adjustment during this period was plus two cents. The Twin Cities' price at plants more than 15 miles from a central point in the marketing area is modified by a location adjustment. The location adjustment applicable at St. Michael is minus 10 cents.

Fargo, North Dakota, and Moorhead, Minnesota, are among the principal cities from which milk is distributed throughout the two proposed marketing areas. These adjoining cities are approximately 240 road miles and about 225 airline miles from Minneapolis-St. Paul. Cass Clay Creamery is in Fargo and the Fairmont Foods plant in Moorhead. The Fergus Dairy plant in Fergus Falls, Minnesota, is about 60 miles to the east. None of these handlers pay on a classified price plan. The average price paid by each of them to their producers per hundredweight of 3.5 percent milk during the year ending May 31, 1960, was \$3.53 by Cass Clay, \$3.54 by Fergus Dairy and \$3.55 by Fairmont Foods. A relatively high proportion of the Grade A milk received by Cass Clay and Fergus Dairy is used for manufacturing purposes. The Fairmont Foods plant at Moorhead is a relatively large Class I operation. In addition, it utilizes both ungraded milk and Grade A milk in making ice cream and cottage cheese.

A number of handlers in the proposed marketing areas pay their producers stated base and excess prices. These stated prices often are not related to the utilization of the milk. In some instances, handlers pay throughout the year for a specified percentage of total producer deliveries at their excess price

even though all or part of such excess milk was used for Class I purposes.

The Minnesota Dairy Company of Grand Forks (77 miles north of Fargo) is one of the principal handlers in this area. This handler does not operate any manufacturing facilities and practically all his producer receipts are used for Class I purposes. The price per hundredweight paid producers for base milk containing 3.5 percent butterfat for the year ending May 31, 1960, was \$3.92 for milk delivered in cans and 15 cents additional for bulk tank shippers. For supplemental supplies of milk received from Fergus Dairy the price paid by Minnesota Dairy ranged from \$3.38 in May to \$4.13 during the fall months per hundredweight of milk containing 3.5 percent butterfat.

Milk received from producers at the Foremost Dairies plant in Jamestown (96 miles west of Fargo) is used principally for Class I purposes. Producers at this plant receive \$4.00 per hundredweight for base milk of 3.5 percent butterfat.

At Bismarck (199 miles west of Fargo) the Yegen Dairy price per hundredweight for base milk of 3.5 percent butterfat during 1959 averaged \$4.38, the surplus price \$3.50 and the blend \$4.17. The producer pay price of Foremost Dairies at Mandan (6 miles west of Bismarck) during 1959 for base milk of 3.5 percent butterfat ranged from \$3.85 to \$4.00 per hundredweight.

Minot is 275 miles northwest of Fargo. The price paid by Purity Dairy of Minot for base milk of 3.5 percent butterfat during 1959 was \$4.20. The comparable prices paid by Farmers Union Creamery and Peterson's Creamery, both of Williston (406 miles northwest of Fargo), averaged \$4.50 during 1959.

As proposed by producers, the Class I price for milk received from dairy farmers at plants in the Fargo-Moorhead area would be the basic formula price plus \$1.20. This price would be increased by as much as an additional 30 cents for milk received at locations extending westward in North Dakota. The level of prices proposed by producers would tend to create disalignment with the prices at plants under the Twin Cities' order and would place handlers under the proposed orders at a disadvantage in competing for sales with handlers under the Twin Cities order.

As indicated above, the Minneapolis-St. Paul order prices are an important factor in pricing milk in this region and the Class I prices under the proposed orders should give recognition to this. The Class I prices should be announced for milk received at plants in the Fargo-Moorhead and Bismarck-Mandan areas, should be related to the Twin Cities' Class I price, and should give consideration to the availability of milk from plants in the Twin Cities order milkshed which are potential sources of supply for handlers under the proposed orders. The Class I prices at locations other than Fargo-Moorhead and Bismarck-Mandan should be adjusted by location differentials (as hereinafter set forth). Fargo-Moorhead and Bismarck-Mandan should be the location for which the Class I prices are announced because

they are the location of the heaviest concentration of producer deliveries in each area.

The Twin Cities Class I price for milk received from producers at the Land O' Lakes St. Michael plant is reduced by a 10-cent location differential. The Class I price at other supply plants more than 15 miles from Minneapolis-St. Paul likewise is reduced by location differentials.

Fargo-Moorhead is about 225 and Bismarck-Mandan about 395 airline miles from Minneapolis-St. Paul. The location differential rate of 1.2 cents for each 10 airline miles (as proposed in this decision) used as transportation rate would result in a hauling charge of 27 cents per hundredweight of milk moved from Twin Cities to Fargo. However, consideration must be given to the fact that if milk were moved to a plant in either of the proposed marketing areas it could originate at a Twin Cities order regulated plant nearer to the proposed marketing areas than the cities of Minneapolis and St. Paul.

A Class I price at Fargo-Moorhead averaging \$1.00 above the basic formula price will obtain an appropriate alignment with the Twin Cities average differential of 86 cents after giving consideration to the hauling costs to Fargo-Moorhead from Twin Cities order plants and the minus location adjustment applicable at such plants (e.g. St. Michael). For the year ending May 31, 1960, the Class I price herein recommended would have resulted in an average price of \$4.05 at Fargo-Moorhead. At other locations at which substantial quantities of milk are received from dairy farmers the comparable Class I prices after applying the location differentials recommended in this decision would have been about \$3.99 at Fergus Falls, \$4.13 at Grand Forks, \$4.16 at Jamestown, \$4.25 at Bismarck and Mandan, \$4.36 at Minot, and \$4.51 at Williston.

The Class I differential in the Twin Cities order varies seasonally; it is \$1.00 July through November and 76 cents in other months. The same monthly seasonality of pricing should be followed in the proposed orders. This would obtain a Class I differential under the Minnesota-North Dakota order of \$1.14 from July through November and 90 cents in other months. For the Western North Dakota order the corresponding differential would be \$1.34 and \$1.10.

The basic formula prices proposed would be the higher of the average of the prices paid at specified Midwestern condenseries or a butter-powder formula price based on the New York 93-score butter price and Chicago area nonfat dry milk quotations. Such a basic formula is suitable and, as provided in the attached recommended orders, will approximate the basic formula price under the Twin Cities order.

The Class I price herein recommended is directly related to the Twin Cities Class I price except as this latter price is modified by a supply-demand adjustment. The Twin Cities supply-demand adjustor has had little effect on Class I price on an annual basis in recent years. For the 12 months ending with May 1960 the supply-demand adjustment ranged

from minus three cents to plus 10.5 cents and for the full 12 months averaged plus 2 cents. However, if there were an abnormal change in the supply-demand conditions for the Twin Cities market it would be reflected in an adjustment in the Class I price.

Should this occur over an extended period, it could have an unstabilizing effect in the proposed marketing areas. It would be appropriate, therefore, to limit the amount by which the Class I prices in the Western North Dakota and Minnesota-North Dakota orders may vary from the Twin Cities Class I price. As herein proposed, the Class I prices (at Fargo-Moorhead and Bismarck-Mandan) will be 14 and 34 cents, respectively, above the announced Twin Cities Class I price (unadjusted by its supply-demand formula). Providing that the Class I prices announced for the Fargo-Moorhead and Bismarck-Mandan locations shall be not greater than the Twin Cities price plus 24 cents and 44 cents, respectively, or less than such price plus 4 cents and 24 cents, respectively, will tend to insure the maintenance of an appropriate relationship among the Class I prices in the markets.

The Class I prices herein provided should be effective for the first 18 months of the order. Sufficient marketing data on receipts and utilization would be available at the end of this period to provide an appropriate basis for re-evaluating the Class I price level at a public hearing.

Class II price. The Class II price under the Minnesota-North Dakota and Western North Dakota orders should be the same as that provided under the Twin Cities order.

Some milk in excess of Class I requirements is necessary in order to maintain an adequate supply of fluid milk for the market on an annual basis. The Class II price for such excess milk should be maintained at the highest level consistent with facilitating its movement to manufacturing outlets when it is not needed in the market for Class I purposes. The Class II price should be at such a level that handlers will accept and market whatever quantities of milk in excess of Class I needs may arise from time to time. The price, however, should not be so low that handlers will be encouraged to procure milk supplies solely for the purpose of converting them into Class II products.

The Class II price formulas which were proposed are patterned after the Twin Cities Class II and Chicago Class IV price formulas. The Chicago Class IV price is calculated by subtracting 75.2 cents from the sum of the amounts obtained by (1) multiplying by 4.24 the average of the daily wholesale prices of Grade AA (93-score) butter at Chicago during the month, and (2) multiplying by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk at manufacturing plants in the Chicago area for the period from the 26th day of the immediately preceding month to the 25th day of the current month.

Prior to July 1, 1960, the Class II price formula in the Twin Cities order was the

same as that for Chicago except for using the 93-score butter quotations at New York instead of at Chicago. For the year ending May 31, 1960, the Twin Cities' Class II price averaged \$2.94.

An amendment to the Twin Cities order effective July 1, 1960, changed the factor of 75.2 cents in the Class II price formula to 65 cents. The effect of this change is an increase of 10.2 cents in the level of the Class II price. Applying this formula for the 12 months ending May 31, 1960, would have resulted in an average Class II price of \$3.04.

There is no consistent pattern of Class II milk pricing throughout the proposed marketing areas. An important reason for this is that most of the milk received from dairy farmers is purchased on a flat price basis and is not directly related to the use made of the milk. At some plants the milk purchased at excess prices is not always used for Class II purposes. Reliable data on representative prices paid for ungraded milk for manufacturing purposes throughout the market are not available.

Large quantities of reserve supplies of milk for the market are utilized in the manufacture of butter and nonfat dry milk. These operations are confined to several large plants. There is much variation in the handling and marketing of surplus milk at the plants of other handlers. Some milk utilized for Class I purposes in the market is handled at plants with limited manufacturing facilities. However, a number of plants which would be pool plants under the orders maintain manufacturing operations, especially for such items as ice cream and cottage cheese. Throughout the year, particularly in the spring months of heavy production, producer milk not needed for fluid uses is moved to manufacturing plants by the handler who regularly receives the milk or by the cooperative association responsible for marketing such producer milk.

Prices paid by manufacturing plants may differ because of changes in the relative prices of the product which they manufacture and because of variations in the quantities of milk available for manufacturing purposes. Handlers will dispose of excess milk to those plants which are paying the highest price at the time of such disposal. Because of smaller volume and inefficient means of handling, it is possible that some handlers may at times incur losses in handling their necessary reserve supplies of milk. The handling of such reserve milk is incidental, however, to the handling of fluid milk.

Elsewhere in this decision the need for maintaining an alignment with the Twin Cities' Class I price is emphasized. Providing for such an alignment with respect to the Class II price is no less necessary.

As noted previously, some Class II milk in the market is used in the higher-valued manufactured outlets such as cottage cheese and ice cream. However, because of the proportionately large use of Class II milk in butter and nonfat dry milk and the availability of ungraded milk throughout much of the marketing area, it would be economically unsound

to price Class II milk predicated solely on its value in these higher-priced outlets. In establishing the level of the Class II price, appropriate consideration should also be given to the limited outlets which a number of handlers who would be regulated by the proposed orders have for excess milk and the distances that such excess supplies must be moved.

Butterfat differentials. Skim milk and butterfat should be accounted for separately for classification purposes as indicated previously. It is necessary, therefore, to adjust Class I and Class II prices for milk in accordance with the average butterfat content of milk in each such class. This can be accomplished by using a butterfat differential which will reflect differences in value due to variation in butterfat content of producer milk utilized in each product.

The value resulting from multiplying the Chicago butter price by 0.120 for Class I milk and by 0.113 for Class II milk will provide appropriate means for adjusting the prices in these markets for each one-tenth percent variation in butterfat content of milk used in the various products. The employment of the Chicago butter price will mirror changes in central market prices for butterfat as they occur. All surrounding Federal order markets use butter price quotations as a basis for adjusting the value of milk according to butterfat content. The method provided for these markets is consistent with that provided under nearby orders for adjusting the value of milk by a butterfat differential for varying butterfat tests and should result in reasonable alignment of prices among markets for milk of the same butterfat content.

There is no consistent practice in these markets of paying for variations in butterfat tests. Butterfat differentials reported range from 5 to 10 cents per point and some producers are paid for their milk according to the pounds of butterfat in their deliveries. In the instances in which producers are paid on a per pound of butterfat basis they receive a proportionately lesser price for the butterfat in their excess or surplus milk.

As proposed by producers the Chicago butter price would be multiplied by 0.120 to determine the Class I price. The various butterfat differentials proposed for adjusting the Class II price ranged from 11 to 11.5 percent of the Chicago butter price.

A handler proposed that the Class I butterfat differential be 0.130 times the Chicago butter price. This would allocate more value to the butterfat in Class I milk than proposed by producers. A number of fluid milk products on the market are made up of a proportionately high percentage of solids not fat (e.g. fortified or modified skim milk). With too high a butterfat differential, producers would not receive their appropriate share of the Class I sales value represented by the solids not fat portion of fluid milk products. A high butterfat differential would have the effect of pricing cream for Class I uses at a high level. On the other hand, the butterfat differential herein recommended will

give some encouragement to increasing the disposition of butterfat in Class I outlets.

The Class II butterfat differential herein proposed will facilitate the movement of butterfat in the reserve supply of milk to manufacturing outlets and thereby eliminate the potentialities of unstable marketing conditions which milk without a market tends to create. A butterfat differential of 11.3 percent of the Chicago butter price should not be so high as to give an unnatural incentive to the movement of butterfat to the manufacture of butter at the expense of preferred outlets such as for cottage cheese and frozen desserts. Moreover, at the recommended rate the cost of butterfat in these markets will be competitive with butterfat from alternative sources of supply.

To coordinate the Class I price and Class I butterfat differential announcement date, the Class I butterfat differential should be based on the average price of butter in the preceding month. The Class II price and butterfat differential will not be announced until after the end of the month and should be based on current month prices. Although handlers will not know the exact cost of Class II milk as it is utilized, they will know that their costs tend to follow daily and weekly dairy product prices and cost of milk to their principal competitors.

The butterfat differential to producers should be calculated at the average of the Class I and Class II butterfat differentials weighted by the proportion of butterfat in producer milk classified in each class during the month. Thus, returns to producers will reflect the actual value of their butterfat at the class prices provided by the orders.

Location differentials. Location differentials should be incorporated in the orders to provide an appropriate adjustment of the Class I price and the uniform price based on the location of any plant at which producer milk is received.

In the Class I discussion it is indicated that Fargo-Moorhead and Bismarck-Mandan are among the principal cities from which milk is distributed throughout the proposed marketing areas and it is recommended that the Class I price be announced for locations for the respective orders. Fargo-Moorhead is about 225 and Bismarck-Mandan about 395 airline miles from Minneapolis-St. Paul. Accordingly, the Class I price for producer milk received at a plant outside these zones should be increased 1.2 cents for each 10 airline miles or fraction thereof that such plant is more than 230 or 400 airline miles, or decreased 1.2 cents for each 10 airline miles or fraction thereof that such plant is less than 220 or 390 airline miles, from the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota, respectively, under the Minnesota-North Dakota and Western North Dakota orders as determined by the market administrator.

The Class I prices recommended in this decision are tied to the Class I price under the Twin Cities order; the milkshed of which is an area of heavy milk

production. Plants in this milkshed, including those not regulated by that order, frequently supply the Class I needs in markets at relatively long distances from the Twin Cities. A number of plants under the Twin Cities order are potential and alternative sources of supply for handlers in the proposed marketing areas: The areas of heaviest milk production for the proposed marketing areas are in and adjacent to the Minnesota Counties in the proposed marketing area and in the North Dakota Counties adjacent and close to the Minnesota border. In this area is concentrated a number of the largest plants in the markets (e.g. Cass Clay Creamery, Fairmont Foods and Fergus Dairy). As indicated elsewhere in this decision, milk from these plants is moved westward throughout the State of North Dakota. Also, milk from these plants, as well as from plants in the Twin Cities milkshed, is moved westward as supplemental supplies for handlers in the proposed areas during periods of low production.

The Class I prices and the blend prices paid by handlers who would be regulated by the proposed orders tend to be higher the farther away their plants are from the Twin Cities milkshed. For this reason the mileage for determining location differentials should be measured from a central point in Minneapolis-St. Paul. Such a central point is the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota. This is the point from which mileage for determining location differential is measured under the Twin Cities order.

The rates proposed as a location differential range from 1 cent to 1.5 cents for each 10 road miles. Milk is moved over relatively long distances by a number of handlers under the proposed orders. It is not uncommon for some handlers to have wholesale and retail outlets several hundred miles from their plants. Under these circumstances a location differential of 1.5 cents for each 10 miles, which has common usage in a number of Federal orders, would tend to be too high. Conversely, the location differential rate of 1 cent for each 10 miles represents a cost realized on a highly efficient operation for milk moved long distances but is not representative of the operations of most handlers in these markets.

Under the Twin Cities order the Class I price is reduced by a location differential for producer milk received at plants more than 15 miles from the Minnesota Transfer Viaduct over University Avenue in St. Paul. The location differential is 8 cents at plants in the 15 to 20 mile zone, is increased by 2 cents for each 10 miles or fraction thereof up to 70 miles and is further increased 1 cent for each additional 10 miles or fraction thereof beyond 70 miles.

Under the Twin Cities order the distances for applying location differentials are determined by airline miles. This method of determining distances for the purpose of applying location differentials would be appropriate for the proposed marketing areas in view of the large geographic expanse of these areas.

The location differential herein recommended is economically sound and

will be applicable to all handlers wherever located. The proposed rates are comparable to those contained in various other orders and are representative of the cost of hauling milk by an efficient means to the market.

Prices paid producers supplying plants to which location differentials apply should be adjusted to reflect the value of milk f.o.b. the point to which delivered.

No adjustment should be made in the Class II price because of the location of the plant to which the milk is delivered. There is little difference in the value of milk for manufactured uses associated with location of the plant receiving the milk. This is because of the low cost per hundredweight of milk involved in transporting manufactured products. The prices paid for ungraded milk received at various points within the milkshed do not indicate any difference in value associated with location.

After a handler receives milk for Class II use, he should be expected to handle and dispose of the milk by the most advantageous method possible. Prices paid producers for such milk should not be made dependent upon the method employed by the handler in disposing of such milk. To do otherwise would remove part of the incentive for keeping handling costs at a minimum.

To insure that milk will not be moved unnecessarily at producers' expense, the orders should contain a provision to determine whether milk transferred between plants may receive the location differential credit. This should provide that, for the purpose of calculating such location differential credit, the skim milk and butterfat in fluid milk products transferred in bulk form be assigned to the available skim milk and butterfat classified in Class II in the transferee plant before being allocated to Class I milk at such plant.

Use of equivalent prices. If for any reason a price quotation required by these orders for computing class prices or for other purposes is not available in the manner described, the market administrator should use a price determined by the Secretary to be equivalent to the price which is required. Including such a provision in the orders will leave no uncertainty with respect to the procedure which shall be followed in the absence of any price quotations which are customarily used and thereby prevent any unnecessary interruption in the operation of the orders.

Payments on unpriced milk. The recommended orders should provide that payment be made into the producer-settlement fund with respect to unpriced milk which is allocated to Class I milk in a pool plant.

Receipt of milk in excess of Class I disposition is necessary to operate a fluid milk business. Because of seasonal fluctuations in production without corresponding changes in demand, this excess or reserve milk must be marketed in manufactured form in competition with products made from ungraded milk. The existence of this reserve Grade A milk, which must be marketed at a lower price, is the primary cause of the instability which may affect fluid milk markets.

Considerable volumes of Grade A milk must be disposed of as surplus by various unregulated plants from which order handlers may obtain milk. When milk is available in substantial volumes from nonpool sources, handlers under the orders could obtain such milk at prices reflecting its value as surplus milk, which prices would approximate the Class II price under the order. During the seasonally high production months of March, April, May and June, the compensation payment on other source milk allocated to Class I milk should be the difference between the minimum price of producer milk used for surplus (Class II) and the Class I price adjusted to the location of the plant from which such other source milk was received from farmers. This rate will reflect generally the difference in the value between unregulated and regulated milk for Class I use at that time.

During the months of July through February, when milk supplies tend to be shorter than in other months, it is not likely that other source fluid milk products will be available to handlers at surplus prices. It may reasonably be expected that during such months milk would be available from unregulated sources at prices more nearly at the level of the uniform price under the order. The compensation payment during these months should be the difference between the uniform price to producers and the Class I price, both adjusted to the location of the plant from which such fluid milk products are supplied. The relationship between the supply of and demand for milk in the order markets in the July through February period tends to fluctuate from year to year according to marketing conditions. These conditions will generally prevail also in surrounding markets which are potential sources of supply for unpriced milk. Thus, the rate of compensation payment based on the difference between Class I and uniform prices will adjust itself automatically in these months in accordance with the proportion of Class I milk to the total milk pooled.

The rates which are here found to be appropriate for the proposed orders give recognition to general competitive conditions in the purchase and sale of fluid milk products. However, since such conditions do not prevail uniformly in all instances and since all transactions are not made under the same circumstances, it would not be administratively feasible to adjust prices or payments to individual transactions.

It is therefore necessary to have definite and specified rates applicable to all handlers similarly situated. The rates herein provided are those which will best effectuate the intent of the Act under current marketing conditions in the area.

Other source milk used in the form of nonfat dry milk should be considered to be from a source at the location of the pool plant where it is used. It would not be administratively feasible to do otherwise because nonfat dry milk may be obtained from numerous sources and it would not always be possible to ascertain at which plant location it originated.

A handler whose distributing plant fails to qualify as a pool plant should make payment to the producer-settlement fund of either (1) the amount of Class I milk sold in the marketing area multiplied by the difference between the Class I and Class II price during March, April, May and June and by the difference between the Class I and uniform price during other months, or (2) the amount by which total payments to dairy farmers are less than the total amount of the plant's obligation to producers which would be computed as if such plant were a pool plant. Under the first option the amount of milk on which a handler would make payment should be reduced by his receipts of Class I milk from pool plants. Because such milk would be priced as Class I milk at the regulated plant where it was received from producers, the pool would not be disadvantaged and the integrity of regulation would be preserved.

If the handler elects to make payments under the first option, the regulatory plan will be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk. If the handler chooses to pay the full utilization value of his milk either directly to his own farmers or by combination of payments to his farmers and to the producer-settlement fund, he will obviously not have any advantage in terms of the minimum order class prices on his sales of Class I milk in the marketing area, for his total minimum obligation for milk will be determined in exactly the same way as if he were a fully regulated handler.

Affording this last option to nonpool plants which distribute some Class I milk in the marketing area of either order will adequately protect the regulatory plan in that market. In the areas from which it is expected most nonpool handlers would procure supplies, no great quantities of milk are available. Moreover, the size of handlers who would use this option is relatively small. The price which these handlers would be required to pay under the option and the uniform price payable by wholly regulated handlers would not differ greatly. Consequently, the exercise of this option could not have a disruptive influence on the handling of milk in this area. For these reasons, it is not necessary, in order to maintain the integrity of the regulatory plan to require these partially regulated plants to make payments into the producer-settlement fund if it is ascertained that they have paid their producers at least the total amount of money which they would be required to pay if they were fully regulated.

No compensation payment should be required on milk classified and priced as Class I under another Federal milk marketing order. The minimum prices for Class I milk under other Federal orders where Western North Dakota and Minnesota-North Dakota order handlers might obtain supplemental supplies approximate the recommended Class I price as adjusted for location of the supplying plants. Since handlers operating plants under other Federal orders must pay for producer milk on a utilization basis, they would not be in a position to

dispose of their surplus producer milk in the Western North Dakota and Minnesota-North Dakota marketing area for Class I use at less than Class I prices.

(d) *Distribution of the proceeds to producers.* Marketwide equalization pools should be included in the recommended orders as a means of distributing to producers the proceeds from the sale of their milk. Such a pool will assure a producer supplying each order market that he will receive a return based on his pro rata share of the total Class I sales of such market. The "blend" price that a producer receives will depend on the overall utilization of all producer milk received at the pool plants of all regulated handlers under each respective order during the month. Although each handler will be required to pay uniform prices for producer milk in accordance with the classification of such milk, the minimum blend prices payable to producers will be the same for all producers under the same order irrespective of the use made of such milk by the individual handler.

The uniformity of payments to producers which is provided under a marketwide pool permits a handler either to maintain a manufacturing operation in his plant to handle the seasonal and daily reserve supplies of milk or to limit the operation at his plant to the handling of milk for Class I purposes only, without affecting the blend prices payable to his producers as against other producers in the market. The facilities in the various plants in the area for handling producer milk which is in excess of that needed for Class I purposes vary considerably. While a number of plants in the market are exclusively Class I operations and handle no surplus milk, many plants which would be subject to the orders handle substantial quantities of milk for manufacturing purposes. Under these conditions marketwide pools in the Western North Dakota and Minnesota-North Dakota marketing areas will facilitate the marketing of producer milk. Marketwide pools will make it possible for producers' associations to assist in diverting seasonal reserve milk and thus keep producers on the market who are needed to fulfill the year-round requirements of the market. It will assist also in apportioning among all producers the lower returns from reserve milk where otherwise this burden would be placed on individual groups of producers. A marketwide pool will thereby contribute to market stability and the attainment of an adequate and dependable supply of producer milk.

No action should be taken to provide a base and excess plan in the orders at the present time. It was proposed that a base and excess plan for distributing returns to producers be incorporated in the orders. Some handlers and cooperatives in the markets now utilize such plans in making payments for producer deliveries. There is a wide variation both in the base-excess plans proposed and those currently in operation, especially regarding the months included in the base-forming and base-paying periods.

The principal purpose of a base-excess plan is to provide an incentive for more

even production throughout the year. At present information relative to production of milk for the market in relation to handlers' Class I needs is not sufficiently available to formulate a base and excess plan within the framework of the orders. Incorporating such a provision in the proposed orders would be more appropriate after they had been in effect for a reasonable period. Meanwhile, the seasonal variation in the Class I price would provide some incentive for more uniform monthly production.

Payments to producers. Each handler under the orders should pay each producer for milk received from such producer, and for which payment is not made to a cooperative association, at not less than the applicable uniform price by the 16th day after the end of each month. Since it has been the practice in this area for handlers to pay producers semi-monthly, provision should be made for partial payments to producers on or before the last day of each month for milk delivered during the first 15 days of such month at not less than the Class II milk price for the preceding month. No adjustment for butterfat content should be required on such partial payment.

Provision should be made for a cooperative association to receive payment for the producer milk which it causes to be delivered to a pool plant. The taking of title to milk of its members and the blending of the proceeds for the sale of such milk will tend to promote the orderly marketing of milk and will assist a cooperative association in discharging its responsibility to its members and to the markets. Such functions can be accomplished more expeditiously if the association is collecting payments for the sale of members' milk.

The Act provides for the payment by handlers to cooperative associations of producers for milk delivered by them and permits the blending of all proceeds from the sale of members' milk.

The contracts with their members authorize each of the principal cooperatives in the markets to collect payment for producer milk. Therefore, each handler, if requested by such cooperative association, would pay such association an amount equal to the sum of the individual payments otherwise payable to such producers. Handlers should be required to make such payments to the cooperative association on or before the 28th day of the month for milk received during the first 15 days of the month and make the final settlement for milk received during the month on or before the 14th day of the following month.

At the time final settlement is made for milk received from producers during the month, the handler should be required to furnish to each producer (or his cooperative association), a supporting statement. Such statement should show the pounds and butterfat tests of milk received from such producer, the rate of payment for such milk and a description of any deductions claimed by the handler.

Producer-settlement fund. All producers will receive payment at the rate of a marketwide uniform price each month and because the payment due

from each handler for producer milk at the applicable class prices may be more or less than he is required to pay directly to producers, a method of equalizing this difference is necessary. A producer-settlement fund should be established for this purpose. A handler whose obligation for producer milk received during the month is greater than the amount he is required to pay producers for such milk at the applicable uniform price would pay the difference into the producer-settlement fund and each handler whose obligation for producer milk is less than the applicable uniform price value would receive payment of the difference from the fund. Provision for the establishment and maintenance of the producer-settlement fund as set forth in the attached orders is similar to that contained in all other Federal orders with marketwide pools.

For efficient functioning of the producer-settlement fund a reasonable reserve should be set aside at the end of each month. This is necessary to provide for such contingencies as the failure of a handler to make payment of his monthly billing to the fund or the payment to a handler from the fund by reason of an audit adjustment. The reserve, which would be operated as a revolving fund and adjusted each month, is established in the attached orders at not less than four nor more than five cents per hundredweight of producer milk in the pool for the month.

Compensatory payments received by the market administrator from any handler would be deposited in the producer-settlement fund. Money thus deposited would be included in the uniform price computation and thereby be distributed to all producers on the market.

(e) **Administrative provisions.** Provisions should be included in the orders with respect to the administrative steps necessary to carry out the proposed regulation.

In addition to the definitions discussed earlier in this decision which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term denotes the same meaning. Such terms as are defined in the attached orders are common to many other Federal milk orders.

Market Administrator. Provision should be made for the appointment by the Secretary of a market administrator to administer each order and to set forth the powers and duties for such agency essential to the proper functioning of such office.

Records and reports. Provisions should be included in the orders requiring handlers to maintain adequate records of their operations and to make reports necessary to establish classification of producer milk and payments due therefor. Time limits must be prescribed for filing such reports and making such payments.

Handlers should maintain and make available to the market administrator all records and accounts of their operations, together with facilities which are necessary to determine the accuracy of information reported to the market ad-

ministrator or any other information upon which the classification of producer milk depends. The market administrator must likewise be permitted to check the accuracy of weights and tests of milk and milk products received and handled, and to verify all payments required under the orders.

Detailed reports to the market administrator and complete records available for his inspection by all handlers would be used to determine whether the plants of such handlers qualify as pool plants. Reports of handlers operating nonpool plants from which fluid milk products are distributed in the marketing areas would also be used by the market administrator to compute the amounts payable to the producer-settlement funds on such unpriced milk.

The market administrator should report to each cooperative association, upon request, the percentage of milk delivered by its members and utilized in each class at each pool plant receiving such milk. For the purpose of this report, the utilization of member milk in each handler's plant would be prorated to each class in the same ratio as all producer milk is allocated to each class during the month.

It is necessary that handlers retain records to prove the utilization of milk and that proper payments were made therefor. Since books and records of all handlers cannot be completely audited immediately after receipt of the milk, it becomes necessary to keep such records for a reasonable period of time.

The orders should provide limitations on the period of time handlers shall be required to retain books and records and on the period of time in which obligations under the orders shall terminate. Provision made in this regard is identical in principle with the general amendment made to all milk orders in operation on July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F.R. 444). That decision, covering the retention of records and limitation of claims, is equally applicable in this situation and is adopted as a part of this decision.

Marketing services. Provision should be made in the orders for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator and the cost should be borne by producers for whom the services are rendered. If a cooperative association is performing such services for its member producers and is approved for such activity by the Secretary, the market administrator may accept this in lieu of his own service.

There is need for a marketing service program in connection with the administration of the orders in this area. Orderly marketing will be promoted by assuring individual producers that they have obtained accurate weights and tests of their milk. Complete verification requires that butterfat tests and weights of individual producer deliveries as reported by the handler are proved to be accurate.

An additional phase of the marketing service program is to furnish producers with correct market information. Efficiency in the production, utilization and

marketing of milk will be promoted by providing for the dissemination of current market information on a market-wide basis to all producers.

To enable the market administrator to furnish these marketing services, provision should be made for a maximum deduction of five cents per hundredweight with respect to receipts of milk from producers for whom he renders marketing services. Comparison of the number of producers involved and the expected volume of milk with that of markets of comparable size indicates that this maximum rate is reasonable and should provide the funds necessary to conduct the program. If later experience indicates that marketing services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

Expense of administration. Each handler should be required to pay the market administrator, as his proportionate share of the cost of administration, not more than four cents per hundredweight, or such lesser amount as the Secretary may prescribe on (a) producer milk (including such handler's own production), (b) other source milk (not subject to administration expense under another order) at a pool plant which is allocated to Class I milk, and (c) receipts at a non-pool distribution plant of Grade A milk received from dairy farmers on which no administration expense is being paid pursuant to another order.

The market administrator must have sufficient funds to enable him to administer properly the terms of the orders. The Act provides that such cost of administration shall be financed through an assessment on handlers. One of the duties of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of Grade A milk received from dairy farmers at a plant and on other source milk allocated to Class I milk.

If a nonpool handler from whose plant Grade A milk is distributed in the Western North Dakota or Minnesota-North Dakota marketing area elects to make payment to the producer-settlement fund at the rate of payment applied to other source milk at a pool plant (instead of making payment for milk received from dairy farmers according to the utilization at such plant at not less than the minimum order prices) the audit of his records by the market administrator would be substantially reduced. Under such circumstances, it would be necessary to ascertain only the quantities of fluid milk products distributed in the marketing area from such plant during the month and the percentage that such utilization is of his total receipts of Grade A milk from dairy farmers. In such instances the administrative assessment would be computed on the basis of the fluid milk products disposed of in the marketing area from the nonpool plant.

In view of the anticipated volume of milk and the cost of administering orders

in markets of comparable circumstances, it is concluded that an initial rate of four cents per hundredweight is necessary to meet administration expenses under the Minnesota-North Dakota and Western North Dakota orders. Provision should be made which would enable the Secretary to adjust the rate of assessment downward without the necessity of amending the orders. This should be done at any time that experience indicates that a lesser rate will provide sufficient revenue to administer the orders properly.

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 to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. (a) The proposed marketing agreements and orders 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 areas and the minimum prices specified in the proposed marketing agreements and the orders are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in public interest; and

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

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreements and orders. Annexed hereto and made a part hereof are documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Western North Dakota Marketing Area" and "Marketing Agreement Regulating the Handling of Milk in the Minnesota-North Dakota Marketing Area", and "Order Regulating the Handling of Milk in the Western North Dakota Marketing Area" and "Or-

der Regulating the Handling of Milk in the Minnesota-North Dakota Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreements are identical with those contained in the attached orders which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted among producers in each market to determine whether the issuance of the attached orders regulating the handling of milk in the Western North Dakota and the Minnesota-North Dakota marketing areas, are approved or favored by the producers, as defined under the terms of the proposed orders, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing areas.

The month of September, 1961 is hereby determined to be the representative period for the conduct of such referenda.

A. T. Radigan is hereby designated agent of the Secretary to conduct such referendum in each market in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referenda to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on November 27, 1961.

JAMES T. RALPH,
Assistant Secretary.

Order¹ Regulating the Handling of Milk in the Western North Dakota Marketing Area

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

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1015.80	Effective time.
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MISCELLANEOUS PROVISIONS

1015.90	Separability of provisions.
1015.91	Agents.

AUTHORITY: §§ 1015.0 through 1015.91 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1015.0 Findings and determinations.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Western North Dakota marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

(2) The parity prices of milk as determined pursuant to section 2 of the Act

are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

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

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to skim milk and butterfat in (i) producer milk (including a handler's own farm production), (ii) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1015.46(a) (3) and (4) and the corresponding steps in § 1015.46(b), and (iii) subject to the proviso of § 1015.78, receipts at a non-pool fluid milk plant of Grade A milk from dairy farmers on which no administration expense has been paid pursuant to another order issued pursuant to the Act.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Western North Dakota marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 1015.1 Act.

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

§ 1015.2 Secretary.

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

§ 1015.3 Department.

"Department" means the United States Department of Agriculture.

§ 1015.4 Person.

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

§ 1015.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary deter-

mines, after application by the association:

(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 is engaged in making collective sales of or marketing milk or milk products for its members.

§ 1015.6 Western North Dakota marketing area.

"The Western North Dakota marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the North Dakota counties of Bottineau, Burke, Burleigh, Divide, Logan, McHenry, McKenzie, McLean, Mountrail, Renville, Sheridan, Ward, Williams; and within the city of Mandan, North Dakota; including territory wholly or partly within such boundaries occupied by government (Municipal, State or Federal) reservations, installations, institutions or other similar establishments.

§ 1015.7 Producer.

"Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant.

§ 1015.8 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is processed or packaged and disposed of during the month on routes in the marketing area.

§ 1015.9 Supply plant.

"Supply plant" means a plant from which Grade A milk, skim milk or cream is shipped during the month to a pool plant.

§ 1015.10 Fluid milk plant.

"Fluid milk plant" means:

- A pool plant, or
- A distributing plant which is a nonpool plant.

§ 1015.11 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section except that of a producer-handler: *Provided*, That if a portion of a plant is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which:

(1) Not less than 15 percent of the Grade A milk received from dairy farmers and other plants is disposed of during the month on routes in the marketing area; and

(2) Not less than 25 percent in any month from the effective date hereof through August 1962 and thereafter not less than 35 percent in any month of July through February and not less than 30 percent in any other month of the Grade A milk received at such plant

from dairy farmers and other plants is disposed of during the month either on routes or by transfer to another plant and classified as Class I pursuant to § 1015.44.

(b) A supply plant from which not less than 35 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products to pool plants qualified pursuant to paragraph (a) of this section: *Provided*, That if such shipments are not less than 50 percent of the Grade A milk received directly from dairy farmers at such plant during each of the immediately preceding months of September through November, such plant shall be a pool plant for the months of March through June unless written application is filed with the market administrator on or before the first day of any such month to be designated a nonpool plant for such month and for each subsequent month through June during which it would not qualify otherwise as a pool plant: *And provided further*, That a plant which would have qualified as a pool plant pursuant to the preceding proviso of this paragraph in each of the months of September through November 1961 if this order had been in effect shall be a pool plant for the months of March through June 1962 unless written application is filed with the market administrator on or before the first day of any such month to be designated as a nonpool plant for such month and for each subsequent month through June 1962 during which it would not qualify otherwise as a pool plant.

§ 1015.12 Nonpool plant.

"Nonpool plant" means a plant which (a) is neither a pool plant nor the plant of a producer-handler and (b) receives milk from dairy farmers or is a milk manufacturing, processing, or bottling plant.

§ 1015.13 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more fluid milk plants, or

(b) Any cooperative association with respect to milk from producers which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association.

§ 1015.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool 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 volume of fluid milk products handled (excluding receipts 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.

§ 1015.15 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk received at a pool plant directly from a dairy farmer: *Provided*, That milk diverted from pool plants to nonpool plants which are not subject to the classification and pricing provisions of another order issued pursuant to the Act shall be deemed to have been received by the diverting handler at the plant from which diverted: *And provided further*, That in any of the months of July through March, the quantity of milk of any producer diverted from pool plants to nonpool plants which are not subject to the classification and pricing provisions of another order issued pursuant to the Act that is greater than the quantity delivered to pool plants shall not be deemed to have been received by the diverting handler at the plant from which diverted and shall not be producer milk.

§ 1015.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, sweet or sour cream disposed of as such or any mixture in fluid form of cream and milk or skim milk (except eggnog, ice cream mix, frozen dessert mix, aerated cream products, evaporated or condensed milk or skim milk, and sterilized products packaged in hermetically sealed metal containers).

§ 1015.17 Other source milk.

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

(a) Fluid milk products from any source except (1) fluid milk products received from pool plants, (2) producer milk; or (3) inventory of fluid milk products at the beginning of the month; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted into or combined with another product in the plant during the month.

§ 1015.18 Route.

"Route" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I pursuant to § 1015.41(a)(1) to a retail or wholesale outlet other than a milk plant or a distribution point.

§ 1015.19 Butter price.

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

MARKET ADMINISTRATOR

§ 1015.30 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be

determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1015.31 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1015.32 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 his duties and conditioned upon the faithful performance of such 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 its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1015.78, the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses except those incurred under § 1015.77, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) 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 such other person as the Secretary may designate;

(f) Publicly announce at his discretion, 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, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1015.35 and 1015.36, nor payments pursuant to §§ 1015.62, 1015.70, 1015.74, 1015.76, 1015.77, and 1015.78;

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

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

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

(j) Publicly announce on or before:

(1) The 6th day of each month the minimum price for Class I milk pursuant to § 1015.51(a) and the Class I butterfat differential pursuant to § 1015.52(a), both for the current month, and the minimum price for Class II milk pursuant to § 1015.51(b) and the Class II butterfat differential pursuant to § 1015.52(b), both for the preceding month; and

(2) The 11th day after the end of each month the uniform price pursuant to § 1015.61 and the producer butterfat differential pursuant to § 1015.71; and

(k) On or before the 11th day after the end of each month report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association or its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

REPORTS, RECORDS AND FACILITIES

§ 1015.35 Report of receipts and utilization.

On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator for such month, reporting separately for each fluid milk plant, in detail and on forms prescribed by the market administrator:

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

(1) Grade A milk received from dairy farmers,

(2) Fluid milk products received from pool plants,

(3) Other source milk,

(4) Milk diverted to nonpool plants pursuant to § 1015.15; and

(5) Inventories of fluid milk products on hand at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area; and

(c) Such other information with respect to the utilization of skim milk and butterfat as the market administrator may prescribe.

§ 1015.36 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator, on or before the 20th day after the end of the month for each of his pool plants, his producer payroll for such month which shall show for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

§ 1015.37 Records and facilities.

Each handler shall maintain and make available to the market administrator, during the usual hours of business, such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products in inventory at the beginning and end of each month; and

(d) Payments to dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

§ 1015.38 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 3 years to begin at the end of the month to which books and records pertain: *Provided*, That if within such 3-year period, the market administrator notifies the handler in writing that the retention of such 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.

CLASSIFICATION

§ 1015.40 Skim milk and butterfat to be classified.

The skim milk and butterfat which are required to be reported pursuant to § 1015.35 shall be classified each month by the market administrator pursuant to the provisions of §§ 1015.41 through 1015.46.

§ 1015.41 Classes of utilization.

Subject to the conditions set forth in § 1015.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including that used to produce reconstituted skim milk) and butterfat:

(1) Disposed of in the form of a fluid milk product (except as provided in paragraph (b) (2) and (3) of this section); and

(2) Not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce any product other than a fluid milk product;

(2) Skim milk disposed of for live-stock feed or dumped if the market administrator has been notified in advance and afforded the opportunity to verify such dumping;

(3) The skim milk represented by the nonfat milk solids added to fluid milk products which is in excess of the weight of such fluid milk products;

(4) Skim milk and butterfat contained in inventory of fluid milk products on hand at the end of the month;

(5) Skim milk and butterfat in shrinkage of producer-milk (except milk diverted to a nonpool plant pursuant to § 1015.15) but not in excess of:

(i) 0.5 percent of such receipts of skim milk and butterfat,

(ii) Plus 1.5 percent of such receipts and of the receipts of skim milk and butterfat, respectively, in bulk fluid milk products from pool plants, and

(iii) Less 1.5 percent of such bulk dispositions to other plants; and

(6) Skim milk and butterfat in shrinkage of other source milk.

§ 1015.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts at each of his fluid milk plants as follows:

(a) Compute the total shrinkage of skim milk and butterfat at each fluid milk plant, and

(b) Prorate the resulting amounts among the receipts of skim milk and butterfat contained in:

(1) Producer milk (except milk diverted to a nonpool plant pursuant to § 1015.15), plus fluid milk products in bulk from other pool plants and less transfers of fluid milk products in bulk to other plants; and

(2) Other source milk.

§ 1015.43 Responsibility of handlers and reclassification of milk.

All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1015.44 Transfers.

Skim milk or butterfat disposed of each month from a fluid milk plant shall be classified:

(a) As Class I milk if transferred in the form of a fluid milk product to a pool plant unless utilization as Class II milk is claimed for both plants in the reports submitted for the month to the market administrator pursuant to § 1015.35: *Provided*, That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the transferee plant after the subtraction of

other source milk pursuant to § 1015.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *Provided further*, That if the transferor plant is a nonpool plant the skim milk or butterfat transferred shall be classified as Class I milk and as Class II milk in the same ratio as other source milk at the transferee plant is allocated to each class pursuant to § 1015.46(a)(4) and the corresponding step in § 1015.46(b): *And provided further*, That if other source milk was received at either or both plants, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk at both plants;

(b) As Class I milk, if transferred to a producer-handler in the form of a fluid milk product and if the transferor plant is a pool plant;

(c) As Class I milk, if transferred or diverted to a nonpool plant in the form of a fluid milk product except as provided in paragraph (d) of this section;

(d) As Class I milk, if transferred or diverted in bulk in the form of a fluid milk product to a nonpool plant not more than 150 miles, by the shortest highway distance as determined by the market administrator, from the nearest of the Post Offices of Bismarck, Minot, and Williston, North Dakota, unless:

(1) The transferring or diverting handler claims classification in Class II milk in his report submitted pursuant to § 1015.35;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in Grade A milk received during the month from dairy farmers who the market administrator determines constitute the regular source of supply for such plant: *Provided*, That any skim milk or butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farmers shall be assigned to such transfers or diversions from the fluid milk plant and shall be classified as Class I milk: *And provided further*, That if the total skim milk and butterfat which were transferred or diverted during the month to such nonpool plant from all plants subject to the classification and pricing provisions of this part and any other orders issued pursuant to the Act are more than the skim milk and butterfat available for assignment to Class I milk pursuant to the preceding proviso hereof, the skim milk and butterfat assigned to Class I milk at a fluid milk plant shall be not less than that obtained by prorating the assignable Class I milk at the transferee plant over the receipts at such plant from all plants subject to

the classification and pricing provisions of this and other orders issued pursuant to the Act.

§ 1015.45 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 submitted pursuant to § 1015.35 for each pool plant and shall compute the pounds of skim milk and butterfat in each class at each such plant: *Provided*, That if any water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1015.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1015.45, the market administrator shall determine the classification of Grade A milk received from dairy farmers at each fluid milk plant each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk classified as Class II milk pursuant to § 1015.41(b)(5);

(2) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk received in the form of fluid milk products in containers not larger than a gallon subject to the pricing and pooling provisions of another order issued pursuant to the Act and disposed of as Class I in the same package as received;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk, other than that received in the form of fluid milk products;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products not subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products subject to the pricing and pooling provisions of another order issued pursuant to the Act and not subtracted pursuant to subparagraph (2) of this paragraph;

(6) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

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

(8) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from pool plants according to the classification of such products pursuant to § 1015.44(a); and

(9) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in Grade A milk received from dairy farmers, subtract such excess (hereinafter referred to as "overage") from the remaining pounds of skim milk in each class in series beginning with Class II milk.

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

(c) Determine the weighted average butterfat content of milk in each class as computed pursuant to paragraphs (a) and (b) of this section.

§ 1015.47 Inventory reclassification.

From any skim milk or butterfat assigned to Class I milk pursuant to § 1015.46(a)(6) and the corresponding step in § 1015.46(b), subtract in the following order the skim milk and butterfat, respectively, assigned during the preceding month to Class II milk pursuant to § 1015.46 in:

(a) The remainder after the subtraction pursuant to § 1015.46(a)(6) and the corresponding step in § 1015.46(b);

(b) Other source milk classified and priced as Class I milk pursuant to another Federal order; and

(c) Other source milk not classified and priced as Class I milk pursuant to another Federal order.

MINIMUM PRICES

§ 1015.50 Basic formula price.

The basic formula price shall be the higher of the prices, rounded to the nearest cent, computed as follows:

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

Present Operator and Location

Borden Co.....	New London, Wis.
Borden Co.....	Orfordville, Wis.
Carnation Co.....	Sparta, Mich.
Carnation Co.....	Richland Center, Wis.
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 obtained by subtracting 75.2 cents from the sum of the amounts resulting from:

(1) Multiplying by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at New York, as reported by the Department, during the month; and

(2) Multiplying by 8.2 the weighted average of carlot prices per pound for nonfat dry milk for human consumption,

spray process, f.o.b. manufacturing plants in the Chicago area as published by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month.

§ 1015.51 Class prices.

Subject to the provisions of §§ 1015.52 and 1015.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* For the first 18 months from the effective date hereof the price for Class I milk shall be the basic formula price for the preceding month plus \$1.34 in July through November and plus \$1.10 in other months: *Provided*, That the price pursuant to this paragraph shall not be greater than the Class I price pursuant to Part 973, of this chapter (Minneapolis-St. Paul) plus 44 cents or less than the Class I price pursuant to Part 973 of this chapter plus 24 cents.

(b) *Class II milk price.* The price for Class II milk shall be the price obtained by subtracting 65 cents from the sum of the amounts resulting from:

(1) Multiplying by 4.24 the simple average, as compared by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at New York, as reported by the Department, during the month; and

(2) Multiplying by 8.2 the weighted average of carlot prices per pound for nonfat dry milk for human consumption, spray process, f.o.b. manufacturing plants in the Chicago area as published by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month.

§ 1015.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices for the month pursuant to § 1015.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at a rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the butter price for the preceding month by 0.120.

(b) *Class II price.* Multiply the butter price for the month by 0.113.

§ 1015.53 Location differentials to handlers.

The Class I price for Grade A milk received from dairy farmers at a fluid milk plant shall be increased 1.2 cents for each 10 airline miles or fraction thereof that such plant is more than 400 airline miles, or decreased 1.2 cents for 10 airline miles or fraction thereof that such plant is less than 390 airline miles, from the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota as determined by the market administrator: *Provided*, That for the purpose of calculating such location differential, fluid milk products transferred between fluid milk plants shall be assigned to any remainder of Class II milk in the transferee plant after making the calculations prescribed

in § 1015.46(a)(6) and the corresponding step of § 1015.46(b) for such plant, such assignment to the transferor plant to be made in sequence according to the location differential applicable at each plant, beginning with the plant nearest the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota.

§ 1015.54 Use of equivalent prices.

If for any reason a price quotation required by this order 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.

§ 1015.55 Rate of payment on unpriced milk.

The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk shall be any plus amount obtained by subtracting from the Class I price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk:

(a) During the months of March through June, the Class II price adjusted by the Class II butterfat differential; and

(b) During the months of July through February, the uniform price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk.

APPLICATION OF PRICES

§ 1015.60 Computation of value of milk at each pool plant.

The value of producer milk received by a handler during each month at each pool plant shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantities of milk in each class by the applicable class price and add the resulting amounts;

(b) Add the amounts computed by multiplying the average deducted from each class pursuant to § 1015.46(a)(9) and the corresponding step of § 1015.46(b) by the applicable class prices;

(c) Add an amount calculated by multiplying the quantities of skim milk and butterfat subtracted from Class I milk pursuant to § 1015.46(a)(3) and (4) and the corresponding steps of § 1015.46(b) by the rate of payment on unpriced milk determined pursuant to § 1015.55 at the nearest nonpool plants from which an equivalent amount of such other source skim milk or butterfat was received: *Provided*, That if the source of any such fluid milk product received at a pool plant is not clearly established, or if such skim milk and butterfat is received or used in a form other than a fluid milk product, such product shall be considered to have been received from a source at the location of the pool plant where it is classified.

(d) Add the amounts obtained by multiplying (1) the quantities of skim milk and butterfat subtracted pursuant to § 1015.47(a) by the difference between the Class II price for the preceding

month and the Class I price for the current month, and (2) the quantities of skim milk and butterfat subtracted pursuant to § 1015.47(c) by the rate of payment on unpriced milk pursuant to § 1015.55.

§ 1015.61 Computation of uniform price.

The market administrator shall compute the uniform price for each month as follows:

(a) Combine into one total the values computed pursuant to § 1015.60 for all handlers who received producer milk at pool plants during the month and who reported pursuant to § 1015.35 for such month, except those in default of payments required pursuant to § 1015.74 for the preceding month; —

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 3.5 percent an amount computed by multiplying such difference by the butterfat differential to producers and multiplying the result by the hundredweight of such producer milk;

(c) Subtract an amount equal to the sum of the location differential additions to be made pursuant to § 1015.72(a);

(d) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 1015.72(b);

(e) Add an amount equal to one-half the unobligated cash balance in the producer-settlement fund;

(f) Divide the value computed pursuant to paragraph (e) of this section by the hundredweight of producer milk included in such computation; and

(g) Subtract not less than four nor more than five cents from the price computed pursuant to paragraph (f) of this section.

§ 1015.62 Handlers operating nonpool plants.

Each handler in his capacity as the operator of a nonpool plant shall pay to the market administrator for deposit into the producer-settlement fund the amount computed pursuant to paragraph (b) of this section unless the handler elects at the time his report pursuant to § 1015.35 is due, to pay the amount computed pursuant to paragraph (a) of this section. The amounts payable pursuant to this section shall be made on or before the 16th day after the end of each month.

(a) An amount obtained by multiplying the rate determined pursuant to § 1015.55 by the hundredweight of skim milk and butterfat disposed of as Class I milk from such plant on routes in the marketing area during the month which is in excess of the hundredweight of skim milk and butterfat, respectively, received from pool plants during the month and classified as Class I milk at such pool plants.

(b) Any plus amount remaining after deducting from the obligation pursuant to § 1015.60 computed as if such plant were a pool plant:

(1) The total payment made on or before the 16th day after the end of the month to dairy farmers for grade A milk

received at such plant during the month; and

(2) Any payments to the producer-settlement fund under other orders issued pursuant to the Act applicable to milk at such plant during the month.

§ 1015.63 Plants subject to other Federal orders.

The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1015.11 and a greater volume of fluid milk products is disposed of from such plant on routes in the Western North Dakota marketing area and to pool plants qualified on the basis of route distribution in the Western North Dakota marketing area than in the marketing area regulated pursuant to such other order: *Provided*, That the operator of a distributing plant or a supply plant which is exempt from the provisions of this part 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 (in lieu of the reports required pursuant to § 1015.35) and allow verification of such reports by the market administrator.

PAYMENTS FOR MILK

§ 1015.70 Time and method of payment.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class II price for the preceding month; and

(2) On or before the 16th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price adjusted pursuant to §§ 1015.71, 1015.72 and 1015.77, and less the payment made pursuant to subparagraph (1) of this paragraph.

(b) Each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payment for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 28th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 14th day after the end of each month for milk received during such month.

(c) In making the payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he

has received milk a supporting statement in such form that it may be retained by the recipient, which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

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

(6) The net amount of payment to such producer or cooperative association.

§ 1015.71 Butterfat differential to producers.

The uniform price for producer milk shall be increased or decreased for each one-tenth of one percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to Class I and Class II milk pursuant to § 1015.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth cent.

§ 1015.72 Location differentials to producers.

(a) The uniform price for producer milk received at a pool plant shall be increased 1.2 cents for each 10 airline miles or fraction thereof that such plant is more than 400 airline miles from the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota, as determined by the market administrator.

(b) The uniform price for producer milk received at a pool plant shall be decreased 1.2 cents for each 10 airline miles or fraction thereof that such plant is less than 390 airline miles from the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota, as determined by the market administrator.

§ 1015.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund and out of which he shall make all payments from such fund pursuant to §§ 1015.62, 1015.74, 1015.75 and 1015.79: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1015.74 Payments to the producer-settlement fund.

On or before the 13th day after the end of each month each handler shall pay to the market administrator the amount by which the obligation pursuant to § 1015.70 of such handler for producer milk received during the month is less than the value of such producer milk pursuant to § 1015.60.

§ 1015.75 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount by which the obligation, pursuant to § 1015.70, of such handler for producer milk received during the month exceeds the value of such producer milk pursuant to § 1015.60.

§ 1015.76 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1015.77 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1015.70 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 16th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part 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 is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 16th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1015.78 Expense of administration.

As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of each month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to skim milk and butterfat contained in (a) producer milk (including a handler's own farm production), (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1015.46(a) (3) and (4) and the corresponding steps in § 1015.46 (b), and (c) receipts at a fluid milk plant which is a nonpool plant of Grade A milk from dairy farmers on which no administration expense assessment is being paid pursuant to another order issued pursuant to the Act:

Provided, That if the operator of such nonpool plant elects to make payment to the producer-settlement fund pursuant to § 1015.62(a), the expense of administration pursuant to this section shall be applicable only to the hundredweight of skim milk and butterfat on which payment to the producer-settlement fund is due pursuant to that paragraph.

§ 1015.79 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(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 months 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 producers 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 part 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 setoff 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.

EFFECTIVE TIME, SUSPENSION OR TERMINATION.

§ 1015.80 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.

§ 1015.81 Suspension or termination.

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

§ 1015.82 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, 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.

(b) 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 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 shall direct; and (3) if so directed by the Secretary execute such assignment 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 thereto.

§ 1015.83 Liquidation after suspension or termination.

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 administrator'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 such funds,

shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1015.90 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.

§ 1015.91 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.

Order¹ Regulating the Handling of Milk in the Minnesota-North Dakota Marketing Area

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

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AUTHORITY: §§ 1035.0 through 1035.91 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1035.0 Findings and determinations.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Minnesota-North Dakota marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

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

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

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

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight of such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to skim milk and butterfat in (i) producer milk (including a handler's own farm production), (ii) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1035.46(a) (3) and (4) and the corresponding steps in § 1035.46(b), and (iii) subject to the proviso of § 1035.78, receipts at a nonpool fluid milk plant of Grade A milk from dairy farmers on which no administration expense has been paid pursuant to another order issued pursuant to the Act.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Minnesota-North Dakota marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 1035.1 Act.

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

§ 1035.2 Secretary.

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

§ 1035.3 Department.

"Department" means the United States Department of Agriculture.

§ 1035.4 Person.

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

§ 1035.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(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 is engaged in making collective sales of or marketing milk or milk products for its members.

§ 1035.6 Minnesota-North Dakota marketing area.

"The Minnesota-North Dakota marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the Minnesota counties of Becker, Clay, Douglas, Grant, Kittson, Mahnomen, Marshall, Norman, Ottertail, Pennington, Polk (except that portion of Polk County lying east of U.S. Highway No. 59), Pope, Red Lake, Stevens, Todd, Traverse, Wadena, and

Wilkin; and within the North Dakota counties of Barnes, Benson, Cass, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, LaMoure, Nelson, Pembina, Pierce, Ramsey, Ransom, Richland, Roletta, Sargent, Steele, Stutsman, Towner, Traill, Walsh, and Wells; including territory wholly or partly within such boundaries occupied by government (Municipal, State or Federal) reservations, installations, institutions or other similar establishments.

§ 1035.7 Producer.

"Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant.

§ 1035.8 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is processed or packaged and disposed of during the month on routes in the marketing area.

§ 1035.9 Supply plant.

"Supply plant" means a plant from which Grade A milk, skim milk or cream is shipped during the month to a pool plant.

§ 1035.10 Fluid milk plant.

"Fluid milk plant" means:

- (a) A pool plant, or
- (b) A distributing plant which is a nonpool plant.

§ 1035.11 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section except that of a producer-handler: *Provided*, That if a portion of a plant is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which:

(1) Not less than 15 percent of the Grade A milk received from dairy farmers and other plants is disposed of during the month on routes in the marketing area; and

(2) Not less than 25 percent in any month from the effective date hereof through August 1962 and thereafter not less than 35 percent in any month of July through February and not less than 30 percent in any other month of the Grade A milk received at such plant from dairy farmers and other plants is disposed of during the month either on routes or by transfers to another plant and classified as Class I pursuant to § 1035.44.

(b) A supply plant from which not less than 35 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products to pool plants qualified pursuant to paragraph (a) of this section: *Provided*, That if such shipments are not less than 50 percent of the Grade A milk received directly from dairy farmers at such plant during each of the

immediately preceding months of September through November, such plant shall be a pool plant for the months of March through June unless written application is filed with the market administrator on or before the first day of any such month to be designated a nonpool plant for such month and for each subsequent month through June during which it would not qualify otherwise as a pool plant:

And provided further, That a plant which would have qualified as a pool plant pursuant to the preceding proviso of this paragraph in each of the months of September through November 1961 if this order had been in effect shall be a pool plant for the months of March through June 1962 unless written application is filed with the market administrator on or before the first day of any such month to be designated as a nonpool plant for such month and for each subsequent month through June 1962 during which it would not qualify otherwise as a pool plant.

§ 1035.12 Nonpool plant.

"Nonpool plant" means a plant which (a) is neither a pool plant nor the plant of a producer-handler and (b) receives milk from dairy farmers or is a milk manufacturing, processing or bottling plant.

§ 1035.13 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more fluid milk plants, or

(b) Any cooperative association with respect to milk from producers which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association.

§ 1035.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool 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 volume of fluid milk products handler (excluding receipts 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.

§ 1035.15 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk received at a pool plant directly from a dairy farmer: *Provided,* That milk diverted from pool plants to nonpool plants which are not subject to the classification and pricing provisions of another order issued pursuant to the Act shall be deemed to have been received by the diverting handler at the plant from which diverted: *And provided further,* That in any of the months of July through March, the quantity of milk of

any producer diverted from pool plants to nonpool plants which are not subject to the classification and pricing provisions of another order issued pursuant to the Act that is greater than the quantity delivered to pool plants shall not be deemed to have been received by the diverting handler at the plant from which diverted and shall not be producer milk.

§ 1035.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, sweet or sour cream disposed of as such or any mixture in fluid form of cream and milk or skim milk (except eggnog, ice cream mix, frozen dessert mix, aerated cream products, evaporated or condensed milk or skim milk, and sterilized products packaged in hermetically sealed metal containers).

§ 1035.17 Other source milk.

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

(a) Fluid milk products from any source except (1) fluid milk products received from pool plants, (2) producer milk or (3) inventory of fluid milk products at the beginning of the month; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted into or combined with another product in the plant during the month.

§ 1035.18 Route.

"Route" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I pursuant to § 1035.41(a)(1) to a retail or wholesale outlet other than a milk plant or a distribution point.

§ 1035.19 Butter price.

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

MARKET ADMINISTRATOR

§ 1035.30 Designation.

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

§ 1035.31 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1035.32 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 his duties and conditioned upon the faithful performance of such 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 its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1035.78, the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses except those incurred under § 1035.77, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) 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 such other person as the Secretary may designate;

(f) Publicly announce at his discretion, 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, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1035.35 and 1035.36, nor payments pursuant to §§ 1035.62, 1035.70, 1035.74, 1035.76, 1035.77 and 1035.78;

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

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

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

(j) Publicly announce on or before:

(1) The 6th day of each month the minimum price for Class I milk pursuant to § 1035.51(a) and the Class I butterfat differential pursuant to § 1035.52(a), both for the current month, and the minimum price for Class II milk pursuant to § 1035.51(b) and the Class II butterfat differential pursuant to § 1035.52(b), both for the preceding month; and

(2) The 11th day after the end of each month the uniform price pursuant to

§ 1035.61 and the producer butterfat differential pursuant to § 1035.71; and

(k) On or before the 11th day after the end of each month report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association or its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

REPORTS, RECORDS, AND FACILITIES

§ 1035.35 Report of receipts and utilization.

On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator for such month, reporting separately for each fluid milk plant, in detail and on forms prescribed by the market administrator:

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

- (1) Grade A milk received from dairy farmers,
- (2) Fluid milk products received from pool plants,
- (3) Other source milk,
- (4) Milk diverted to nonpool plants pursuant to § 1035.15, and
- (5) Inventories of fluid milk products on hand at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area; and

(c) Such other information with respect to the utilization of skim milk and butterfat as the market administrator may prescribe.

§ 1035.36 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator, on or before the 20th day after the end of the month for each of his pool plants, his producer pay roll for such month which shall show for each producer:

- (1) His name and address;
- (2) The total pounds of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;
- (3) The average butterfat content of such milk; and
- (4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

§ 1035.37 Records and facilities.

Each handler shall maintain and make available to the market administrator, during the usual hours of business, such accounts and records of his operations,

together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products in inventory at the beginning and end of each month; and

(d) Payments to dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

§ 1035.38 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 3 years to begin at the end of the month to which books and records pertain: *Provided*, That if within such 3-year period, the market administrator notifies the handler in writing that the retention of such 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.

CLASSIFICATION

§ 1035.40 Skim milk and butterfat to be classified.

The skim milk and butterfat which are required to be reported pursuant to § 1035.35 shall be classified each month by the market administrator pursuant to the provisions of §§ 1035.41 through 1035.46.

§ 1035.41 Classes of utilization.

Subject to the conditions set forth in § 1035.44, the classes of utilization shall be as follows:

(a) *Class I milk*. Class I milk shall be all skim milk (including that used to produce reconstituted skim milk) and butterfat:

(1) Disposed of in the form of a fluid milk product (except as provided in paragraph (b) (2) and (3) of this section); and

(2) Not accounted for as Class II milk.

(b) *Class II milk*. Class II milk shall be:

(1) Skim milk and butterfat used to produce any product other than a fluid milk product;

(2) Skim milk disposed of for livestock feed or dumped if the market administrator has been notified in advance and afforded the opportunity to verify such dumping;

(3) Skim milk represented by the non-fat milk solids added to fluid milk products which is in excess of the weight of such fluid milk products;

(4) Skim milk and butterfat contained in inventory of fluid milk products on hand at the end of the month;

(5) Skim milk and butterfat in shrinkage of producer milk (except milk diverted to a nonpool plant pursuant to § 1035.15) but not in excess of:

(i) 0.5 percent of such receipts of skim milk and butterfat, respectively,

(ii) Plus 1.5 percent of such receipts and of the receipts of skim milk and butterfat, respectively, in bulk fluid milk products from pool plants, and

(iii) Less 1.5 percent of such bulk dispositions to other plants; and

(6) Skim milk and butterfat in shrinkage of other source milk.

§ 1035.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts at each of his fluid milk plants as follows:

(a) Compute the total shrinkage of skim milk and butterfat at each fluid milk plant, and

(b) Prorate the resulting amounts among the receipts of skim milk and butterfat contained in:

(1) Producer milk (except milk diverted to a nonpool plant pursuant to § 1035.15), plus fluid milk products in bulk from other pool plants and less transfers of fluid milk products in bulk to other plants; and

(2) Other source milk.

§ 1035.43 Responsibility of handlers and reclassification of milk.

All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1035.44 Transfers.

Skim milk or butterfat disposed of each month from a fluid milk plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to a pool plant unless utilization as Class II milk is claimed for both plants in the reports submitted for the month to the market administrator pursuant to § 1035.35: *Provided*, That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the transferee plant after the subtraction of other source milk pursuant to § 1035.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *Provided further*, That if the transferor plant is a nonpool plant the skim milk or butterfat transferred shall be classified as Class I milk and as Class II milk in the same ratio as other source milk at the transferee plant is allocated to each class pursuant to § 1035.46(a) (4) and the corresponding step of § 1035.46(b): *And provided further*, That if other source milk was received at either or both plants, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk at both plants;

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

milk product and if the transferor plant is a pool plant;

(c) As Class I milk, if transferred or diverted to a nonpool plant in the form of a fluid milk product except as provided in paragraph (d) of this section;

(d) As Class I milk, if transferred or diverted in bulk in the form of a fluid milk product to a nonpool plant not more than 150 miles, by the shortest highway distance as determined by the market administrator, from the nearest of the Post Offices of Devils Lake, Fargo, Grand Forks, and Jamestown, North Dakota, unless:

(1) The transferring or diverting handler claims classification in Class II milk in his report submitted pursuant to § 1035.35;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in Grade A milk received during the month from dairy farmers who the market administrator determines constitute the regular source of supply for such plant: *Provided*, That any skim milk or butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farmers shall be assigned to such transfers or diversions from the fluid milk plant and shall be classified as Class I milk: *And provided further*, That if the total skim milk and butterfat which were transferred or diverted during the month to such nonpool plant from all plants subject to the classification and pricing provisions of this part and any other orders issued pursuant to the Act are more than the skim milk and butterfat available for assignment to Class I milk pursuant to the preceding proviso hereof, the skim milk and butterfat assigned to Class I milk at a fluid milk plant shall be not less than that obtained by prorating the assignable Class I milk at the transferee plant over the receipts at such plant from all plants subject to the classification and pricing provisions of this and other orders issued pursuant to the Act.

§ 1035.45 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 submitted pursuant to § 1035.35 for each fluid milk plant and shall compute the pounds of skim milk and butterfat in each class at each such plant: *Provided*, That if any water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such

product plus all the water originally associated with such solids.

§ 1035.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1035.45, the market administrator shall determine the classification of Grade A milk received from dairy farmers at each fluid milk plant each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk classified as Class II milk pursuant to § 1035.41(b) (5);

(2) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk received in the form of fluid milk products in containers not larger than a gallon subject to the pricing and pooling provisions of another order issued pursuant to the Act and disposed of as Class I in the same package as received;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that received in the form of fluid milk products;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products not subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products subject to the pricing and pooling provisions of another order issued pursuant to the Act and not subtracted pursuant to subparagraph (2) of this paragraph;

(6) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

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

(8) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from pool plants according to the classification of such products pursuant to § 1035.44(a);

(9) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in Grade A milk received from dairy farmers, subtract such excess (hereinafter referred to as "overage") from the remaining pounds of skim milk in each class in series beginning with Class II milk.

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

(c) Determine the weighted average butterfat content of milk in each class as

computed pursuant to paragraphs (a) and (b) of this section.

§ 1035.47 Inventory reclassification.

From any skim milk or butterfat assigned to Class I milk pursuant to § 1035.46(a) (6) and the corresponding step in § 1035.46(b), subtract in the following order the skim milk and butterfat, respectively, assigned during the preceding month to Class II milk pursuant to § 1035.46 in:

(a) The remainder after the subtraction pursuant to § 1035.46(a) (6) and the corresponding step in § 1035.46(b);

(b) Other source milk classified and priced as Class I milk pursuant to another Federal order; and

(c) Other source milk not classified and priced as Class I milk pursuant to another Federal order.

MINIMUM PRICES

§ 1035.50 Basic formula price.

The basic formula price shall be the higher of the prices, rounded to the nearest cent, computed as follows:

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

Present Operator and Location

Borden Co.....	New London, Wis.
Borden Co.....	Orfordville, Wis.
Carnation Co.....	Sparta, Mich.
Carnation Co.....	Richland Center, Wis.
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 obtained by subtracting 75.2 cents from the sum of the amounts resulting from:

(1) Multiplying by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at New York, as reported by the Department, during the month; and

(2) Multiplying by 8.2 the weighted average of carlot prices per pound for nonfat dry milk for human consumption, spray process, f.o.b. manufacturing plants in the Chicago areas as published by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month.

§ 1035.51 Class prices.

Subject to the provisions of §§ 1035.52 and 1035.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* For the first 18 months from the effective date hereof the price for Class I milk shall be the basic formula price for the preceding month plus \$1.14 in July through November and plus \$0.90 in other months: *Provided*, That the price pursuant to this paragraph shall not be greater than the Class I price pursuant to Part 973 of this chapter (Minneapolis-St. Paul) plus

24 cents or less than the Class I price pursuant to Part 973 of this chapter plus 4 cents.

(b) *Class II milk price.* The price for Class II milk shall be the price obtained by subtracting 65 cents from the sum of the amounts resulting from:

(1) Multiplying by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at New York, as reported by the Department, during the month; and

(2) Multiplying by 8.2 the weighted average of carlot prices per pound for nonfat dry milk for human consumption, spray process, f.o.b. manufacturing plants in the Chicago area as published by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month.

§ 1035.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices for the month pursuant to § 1035.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at a rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the butter price for the preceding month by 0.120.

(b) *Class II price.* Multiply the butter price for the month by 0.113.

§ 1035.53 Location differentials to handlers.

The Class I price for Grade A milk received from dairy farmers at a fluid milk plant shall be increased 1.2 cents for each 10 airline miles or fraction thereof that such plant is more than 230 airline miles, or decreased 1.2 cents for each 10 airline miles or fraction thereof that such plant is less than 220 airline miles, from the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota as determined by the market administrator: *Provided*, That for the purpose of calculating such location differential, fluid milk products transferred between fluid milk plants shall be assigned to any remainder of Class II milk in the transferee plant after making the calculations prescribed in § 1035.46(a)(6) and the corresponding step of § 1035.46(b) for such plant, such assignment to the transferor plant to be made in sequence according to the location differential applicable at each plant, beginning with the plant nearest the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota.

§ 1035.54 Use of equivalent prices.

If for any reason a price quotation required by this order 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.

§ 1035.55 Rate of payment on unpriced milk.

The rate of payment per hundredweight to be made by handlers on un-

priced other source milk allocated to Class I milk shall be any plus amount obtained by subtracting from the Class I price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk:

(a) During the months of March through June, the Class II price adjusted by the Class II butterfat differential; and

(b) During the months of July through February, the uniform price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk.

APPLICATION OF PRICES

§ 1035.60 Computation of value of milk at each pool plant.

The value of producer milk received by a handler during each month at each pool plant shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantities of milk in each class by the applicable class price and add the resulting amounts;

(b) Add the amounts computed by multiplying the average deducted from each class pursuant to § 1035.46(a)(9) and the corresponding step of § 1035.46(b) by the applicable class prices;

(c) Add an amount calculated by multiplying the quantities of skim milk and butterfat subtracted from Class I milk pursuant to § 1035.46(a)(3) and (4) and the corresponding steps of § 1035.45(b) by the rate of payment on unpriced milk determined pursuant to § 1035.55 at the nearest nonpool plants from which an equivalent amount of such other source skim milk or butterfat was received: *Provided*, That if the source of any such fluid milk product received at a pool plant is not clearly established, or if such skim milk and butterfat is received or used in a form other than a fluid milk product, such product shall be considered to have been received from a source at the location of the pool plant where it is classified.

(d) Add the amounts obtained by multiplying (1) the quantities of skim milk and butterfat subtracted pursuant to § 1035.47(a) by the difference between the Class II price for the preceding month and the Class I price for the current month, and (2) the quantities of skim milk and butterfat subtracted pursuant to § 1035.47(c) by the rate of payment on unpriced milk pursuant to § 1035.55.

§ 1035.61 Computation of uniform price.

The market administrator shall compute the uniform price for each month as follows:

(a) Combine into one total the values computed pursuant to § 1035.60 for all handlers who received producer milk at pool plants during the month and who reported pursuant to § 1035.35 for such month, except those in default of payments required pursuant to § 1035.74 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 3.5 percent an amount computed by multiplying such difference by the butterfat differential to producers and multiplying the result by the hundredweight of such producer milk;

(c) Subtract an amount equal to the sum of the location differential additions to be made pursuant to § 1035.72(a);

(d) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 1035.72(b);

(e) Add an amount equal to one-half the unobligated cash balance in the producer-settlement fund;

(f) Divide the value computed pursuant to paragraph (e) of this section by the hundredweight of producer milk included in such computation; and

(g) Subtract not less than four nor more than five cents from the price computed pursuant to paragraph (f) of this section.

§ 1035.62 Handlers operating nonpool plants.

Each handler in his capacity as the operator of a nonpool plant shall pay to the market administrator for deposit into the producer-settlement fund the amount computed pursuant to paragraph (b) of this section unless the handler elects at the time his report pursuant to § 1035.35 is due, to pay the amount computed pursuant to paragraph (a) of this section. The amounts payable pursuant to this section shall be made on or before the 16th day after the end of each month.

(a) An amount obtained by multiplying the rate determined pursuant to § 1035.55 by the hundredweight of skim milk and butterfat disposed of as Class I milk from such plant on routes in the marketing area during the month which is in excess of the hundredweight of skim milk and butterfat, respectively, received from pool plants during the month and classified as Class I milk at such pool plants.

(b) Any plus amount remaining after deducting from the obligation pursuant to § 1035.60 computed as if such plant were a pool plant:

(1) The total payment made on or before the 16th day after the end of the month to dairy farmers for grade A milk received at such plant during the month; and

(2) Any payments to the producer-settlement fund under other orders issued pursuant to the Act applicable to milk at such plant during the month.

§ 1035.63 Plants subject to other Federal orders.

The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1035.11 and a greater volume of fluid milk products is disposed of from such plant on routes in the Minnesota-North Dakota marketing area and

to pool plants qualified on the basis of route distribution in the Minnesota-North Dakota marketing area than in the marketing area regulated pursuant to such other order: *Provided*, That the operator of a distributing plant or a supply plant which is exempt from the provisions of this part 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 (in lieu of the reports required pursuant to § 1035.35) and allow verification of such reports by the market administrator.

PAYMENTS FOR MILK

§ 1035.70 Time and method of payment.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class II price for the preceding month; and

(2) On or before the 16th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price adjusted pursuant to §§ 1035.71, 1035.72 and 1035.77, and less the payment made pursuant to subparagraph (1) of this paragraph.

(b) Each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payment for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 28th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 14th day after the end of each month for milk received during such month.

(c) In making the payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient, which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

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

(6) The net amount of payment to such producer or cooperative association.

§ 1035.71 Butterfat differential to producers.

The uniform price for producer milk shall be increased or decreased for each one-tenth of one percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to Class I and Class II milk pursuant to § 1035.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth cent.

§ 1035.72 Location differentials to producers.

(a) The uniform price for producer milk received at a pool plant shall be increased 1.2 cents for each 10 airline miles or fraction thereof that such plant is more than 230 airline miles from the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota, as determined by the market administrator.

(b) The uniform price for producer milk received at a pool plant shall be decreased 1.2 cents for each 10 airline miles or fraction thereof that such plant is less than 220 airline miles from the Minnesota Transfer Viaduct over University Avenue in St. Paul, Minnesota, as determined by the market administrator.

§ 1035.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund and out of which he shall make all payments from such fund pursuant to §§ 1035.62, 1035.74, 1035.75 and 1035.76: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1035.74 Payments to the producer-settlement fund.

On or before the 13th day after the end of each month each handler shall pay to the market administrator the amount by which the obligation pursuant to § 1035.70 of such handler for producer milk received during the month is less than the value of such producer milk pursuant to § 1035.60.

§ 1035.75 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount by which the obligation, pursuant to § 1035.70, of such handler for producer milk received during the month exceeds the value of such producer milk pursuant to § 1035.60.

§ 1035.76 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market ad-

ministrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1035.77 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1035.70 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 16th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part 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 is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 16th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1035.78 Expense of administration.

As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of each month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to skim milk and butterfat contained in (a) producer milk (including a handler's own farm production), (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1035.46(a) (3) and (4) and the corresponding steps in § 1035.46 (b) and (c) receipts at a fluid milk plant which is a nonpool plant of Grade A milk from dairy farmers on which no administration expense assessment is being paid pursuant to another order issued pursuant to the Act: *Provided*, That if the operator of such nonpool plant elects to make payment to the producer-settlement fund pursuant to § 1035.62(a), the expense of administration pursuant to this section shall be applicable only to the hundredweight of skim milk and butterfat on which payment to the producer-settlement fund is due pursuant to that paragraph.

§ 1035.79 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(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 months 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 producers 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 part 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 setoff by the market 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.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1035.80 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.

§ 1035.81 Suspension or termination.

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

§ 1035.82 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, 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.

(b) 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 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 shall direct; and (3) if so directed by the Secretary execute such assignment 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 thereto.

§ 1035.83 Liquidation after suspension or termination.

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 administrator'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 such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1035.90 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.

§ 1035.91 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.

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