FEDERAL REGISTER

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Atomic Energy Commission
Business and Defense Services Administration
Civil Aeronautics Board
Civil Service Commission
Coast Guard
Commodity Credit Corporation
Consumer and Marketing Service
Customs Bureau
Emergency Planning Office
Engineers Corps
Equal Employment Opportunity Commission
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Federal Communications Commission
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Labor Department
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Securities and Exchange Commission
Small Business Administration

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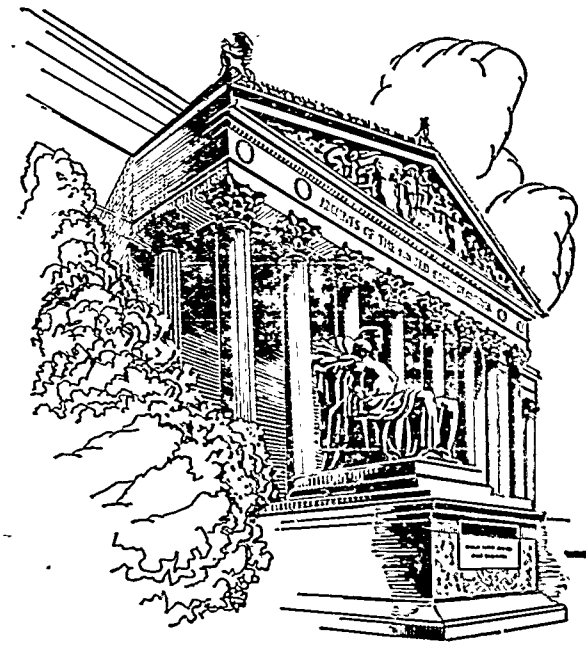

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[Revised Edition—1965]

This pamphlet contains typical legal references which require further citing. The official published volumes in which the citations may be found are shown alongside each reference—with suggestions as to the logical sequence to follow in using them. Additional finding aids, some especially useful in citing current legislation, also have been included. Examples are furnished at pertinent points and a list of references, with descriptions, is carried at the end.

This revised edition contains illustrations of principal finding aids and reflects the changes made in the new master table of statutes set out in the 1964 edition of the United States Code.

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PART 891—RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS

Eligibility

On September 2, 1967, the Commission published as proposed rulemaking amendments to Part 891 of Title 5 of the Code of Federal Regulations relating to the Retired Federal Employees Health Benefits Program. The amendment revokes the requirement that the survivor of a covered employee not be married if he is to benefit from the Retired Federal Employees Health Benefits Program. This change benefits those spouses awarded annuity after remarriage by Public Law 89-504. The thirty days for submission of comments, objections, and suggestions having expired, the amendments are issued effective upon date of publication in the FEDERAL REGISTER.

§ 891.103 Eligibility.

* * * * *

(c) *Survivors entitled to annuity.* A survivor who is entitled to annuity is eligible for the benefits provided by this part if he is:

(1) In receipt of immediate annuity as the survivor of (i) an employee who died before his first pay period beginning after June 30, 1960; or (ii) a retired employee whose annuity began to accrue before his first pay period beginning after June 30, 1960;

(2) The survivor of (i) an employee who had at least 5 years' creditable service, (ii) a former employee who retired having at least 12 years' creditable service and received an immediate annuity, or (iii) a former employee who retired under a disability provision of his retirement system; and

(3) Not receiving annuity as the survivor of a person who at the time of the retirement or death, as the case may be, on which annuity is based, was an employee of the Tennessee Valley Authority or of any corporation under the jurisdiction of the Farm Credit Administration of which corporation any member of the board of directors was elected or appointed by private interests, or was a noncitizen having a permanent-duty station outside the several States and the District of Columbia.

* * * * *

(e) *Family members entitled to compensation.* A member of a family who is receiving compensation is eligible for the benefits provided by this part if he is:

(1) A survivor beneficiary of (i) an employee who completed 5 years of service and died as a result of injury or illness which is compensable under the Federal Employees Compensation Act and which was sustained or contracted before his first pay period beginning after June 30, 1960, or (ii) a former employee who was separated after having completed at least 5 years of service and who died while receiving monthly compensation under the act on account of injury sustained or illness contracted before his first pay period beginning after June 30, 1960, and who has been held by the Secretary of Labor to have been unable to return to duty; and

(2) Not receiving compensation as the survivor of a person who at the time of sustaining the injury or contracting the illness, as the case may be, on which compensation is based, was an employee of the Tennessee Valley Authority or of any corporation under the jurisdiction of the Farm Credit Administration of which corporation any member of the board of directors was elected or appointed by private interests, or was a noncitizen having a permanent-duty station outside the several States and the District of Columbia.

* * * * *

(Sec. 9, 74 Stat 851)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 67-12294; Filed, Oct. 17, 1967; 8:47 a.m.]

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER C—SPECIAL PROGRAMS

PART 777—PROCESSOR WHEAT MARKETING CERTIFICATE REGULATIONS

Miscellaneous Amendments; Correction

Amendment 5 to the Republication of the Processor Wheat Marketing Certificate Regulations (32 F.R. 12551, Aug. 30, 1967) is corrected by changing Appendix VI as follows:

1. By changing the zip codes for the two banks shown below to read as follows:

Kansas City..... 64198
Oklahoma City Branch... 73125

2. By changing the address for the bank shown below to read as follows:

Little Rock Branch,
West Capital and Spring Street,
Post Office Box 1261,
Little Rock, Ark. 72203.

3. By adding the following:

Processors are requested to use the Post Office Box number only when sending remittances to the Federal Reserve Bank or Branch for which both the street address and Post Office Box number are shown in Appendix VI.

Signed at Washington, D.C., on October 11, 1967.

E. A. JAENKE,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 67-12301; Filed, Oct. 17, 1967; 8:47 a.m.]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 817]

PART 817—REQUIREMENTS RELATING TO BRINGING OR IMPORTING SUGAR OR LIQUID SUGAR INTO CONTINENTAL UNITED STATES

On pages 11996 to 12005 of the FEDERAL REGISTER of August 19, 1967 there was published a notice of proposed rule making to issue an amendment revising Part 817 (Sugar Regulation 817) which sets forth regulation relating to bringing or importing sugar or liquid sugar into the United States. Interested persons were given 15 days to submit written data, views, or objections for consideration in connection with the proposed amendment.

Recommendations were received only from the Commissioner of Customs, Treasury Department. Such recommended changes pertained only to definitions and are adopted herein.

The proposed regulations as so published are hereby adopted subject to the following changes:

1. Section 817.2 is amended by changing paragraphs (f) and (o).

2. Section 817.11 is amended by deleting from the list of forms in paragraph (c) the form identified as "SU-24—Certification of Inventory of Over-Quota Sugar."

Effective date. In accordance with 5 U.S.C. 533 this amendment shall become effective 30 days following the date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 12th day of October 1967.

ORVILLE L. FREEMAN,
Secretary.

Pursuant to the authority vested in the Secretary of Agriculture by section 403(a) of the Act, Part 817 is revised and amended to read as follows:

Sec.
817.1 Purpose and persons affected.
817.2 Definitions.
817.3 Restrictions on importing sugar and liquid sugar.
817.4 Application by importer.
817.5 Release by a Collector.
817.6 Specific authorization for release.
817.7 Applicable quota and allotment.
817.8 Authorization for purposes other than to fill current quotas.
817.9 Bonds to cover releases.
817.10 Sugar-containing products and mixtures.
817.11 Records and reports.
817.12 Delegation of authority.

AUTHORITY: The provisions of this Part 817 issued under sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interpret or apply secs. 101, 202, 205, 209, 211, 212; 61 Stat. 922, as amended, 924, as amended, 926, as amended, 928; 7 U.S.C. 1101, 1112, 1115, 1121, 1122.

§ 817.1 Purpose and persons affected.

(a) Under authority contained in the Sugar Act of 1948, as amended (61 Stat. 922, as amended) and subject to the provisions contained in Part 811 of this chapter, the regulations in this part establish the procedures applicable to (1) importing or bringing sugar into the continental United States from all domestic offshore areas and foreign countries, (2) importing or bringing sugar in a sugar-containing product or mixture into the United States, Hawaii, or Puerto Rico, and (3) reporting the applicable evaluation provided for in Part 810 of this chapter and the subsequent processing and movement of imported sugar.

(b) Persons affected by the provisions of this part include importers, mainland refiners, allottees of offshore domestic sugar quotas, shipping companies engaged in the transportation of sugar to ports in the continental United States, persons otherwise engaged in the movement of sugar in interstate or foreign commerce and surety companies undertaking obligations with respect to offshore sugar.

§ 817.2 Definitions.

As used in this part:

(a) The term "Act" means the Sugar Act of 1948, as amended (61 Stat. 922).

(b) The term "person" means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity, and, wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(c) The term "Department" means the U.S. Department of Agriculture.

(d) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated the authority or to whom authority may hereafter be delegated to act in his stead.

(e) The term "Sugar Quota Group" means the Sugar Quota Group of the Policy and Program Appraisal Division, Agricultural Stabilization and Conservation Service of the Department, Washington, D.C. 20250, or any other organizational unit within the Department to which administration of the Quota and Allotment provisions of the Sugar Act may hereafter be delegated.

(f) The term "Collector" means the District Director of Customs for the Customs District in which the port of entry is located. The term "District Director of Customs" has been defined in the Customs Regulations as including, for Customs Region II, at the port of New York, N.Y., the Regional Commissioner of Customs or the Deputy or Assistant Regional Commissioner of Customs (19 CFR 1.1(d)).

(g) The terms "import," "importation" and "importing" mean the act of bringing sugar into the continental United States (including Alaska) from either an insular domestic area or a foreign country. For purposes of the regulations of this part, the time of importation shall not be earlier than the time and date that a carrier arrives within the port limit of a Customs port or point of entry as shown by the log of the carrier with intent to therein unlade, except when such time and date is in conflict with official records of the Customs port of arrival in which event the time and date shown by Customs records shall govern.

(h) The term "importer" means any person who brings or imports sugar or liquid sugar into the continental United States from either an offshore domestic area or a foreign country including but not limited to the owner, consignor, consignee, transferee, or purchaser of such sugar or the broker acting in behalf of such person.

(i) The term "refiner" means any person who subjects offshore sugar or liquid sugar to processes as provided in Part 810 of this subchapter.

(j) The terms "sugars," "sugar," "raw sugar," "direct-consumption sugar" and "liquid sugar" have the meanings ascribed to each in section 101 (b), (c), (d), (e), and (f), respectively, of the Act subject to the provisions of Part 810 of this subchapter with respect to the distinction between raw and direct-consumption sugar. The term "Sugar" also shall mean "liquid sugar".

(k) The term "quota" means any quota, direct-consumption limitation within a quota, proration or allotment of either a quota or direct-consumption limitation, or any quantity authorized for purchase and importation from foreign countries established by the Secretary in Part 811 of this subchapter pursuant to the Act.

(l) The term "allotment" means any allotment of any quota made by the Secretary pursuant to section 205(a) of the Act.

(m) The term "port of departure" means the port of departure in the producing area, except that where sugar is from a country or area having no seaport of its own and the sugar must be transported to another country or area for marine shipment, the term means the port at which the sugar is placed on a carrier for shipment to the continental United States.

(n) The term "producing area" means the country or area in which the sugarcane or sugar beets from which the sugar was produced were grown.

(o) The term "release" means the act on the part of a Collector of permitting sugar to be entered under appropriate customs procedures and in conformance with the Act and the regulations in this part.

§ 817.3 Restrictions on importing sugar and liquid sugar.

(a) Any person is hereby prohibited from importing at any one time more than 100 pounds of sugar except pursuant to the provisions of this part.

(b) Sugar shall be imported only at Customs ports of entry.

(c) Subsequent provisions of this part do not apply to operators of common carriers importing a quantity of sugar no larger than reasonably required for consumption by passengers and crew to the termination of a trip beginning in an insular area or foreign country.

(d) A copy of the carrier's manifest, bills of lading, or other shipping documents covering all sugar in a shipment must be submitted to the Collector before delivery to the consignee of sugar for direct-consumption or within 72 hours after the beginning of unlading of sugar which is to be further refined.

(e) In any case in which the Collector is not authorized pursuant to § 817.5 to permit the release of any sugar at the time of arrival at the port of entry, he shall take custody of such sugar whether of domestic or foreign origin and shall retain custody, at the risk and expense of the consignee or owner, until authorized to permit release thereof in accordance with § 817.5. In taking and retaining custody pursuant to the regulations of this part of sugar of foreign origin, the Collector shall be governed by the provisions of §§ 4.37, 4.38, 19.1 through 19.9 and 19.12 of Chapter I, Title 19, Code of Federal Regulations, which are made applicable to such custody by reference as fully as if set forth in full herein. In taking and retaining custody of sugar of domestic origin, pursuant to the regulations of this part, the Collector shall place and hold such sugar in a public warehouse or in a private warehouse: *Provided*, That if sugar is retained in custody in a private warehouse, it shall be either (1) segregated from all other sugar or (2) if commingled with other sugar, additions to or withdrawals from the unsegregated mass shall be made only in the presence of a Customs officer.

(f) (1) Sugar may be unladed from a carrier and placed in Customs custody for manipulating therein or brought into a Foreign Trade Zone for manipulating therein or manufacturing therein another product—for subsequent entry into and consumption in the continental

United States—only if such sugar is authorized for entry within an applicable quota or pursuant to § 817.8 or § 817.10.

(2) Any quantity of sugar of any origin removed from a carrier and placed in the custody of a Collector or in a Foreign Trade Zone shall be reported within 24 hours from the time such sugar is removed from the carrier. Such report shall be made by the importer who shall furnish all information required pursuant to paragraph (a) of § 817.4. The report shall be made on appropriate copies of the "Sugar Quota Clearance Record" and must be submitted to the Collector for confirmation and transmittal to the Sugar Quota Group.

(g) Sugar released by a Collector pursuant to § 817.5 for further processing shall not be delivered for direct-consumption without prior authorization by the Secretary. The application for such authorization (change of purpose) must be made on appropriate copies of the "Sugar Quota Clearance Record," and must show all of the information specified in paragraph (a) of § 817.4 and shall be submitted to the Sugar Quota Group.

§ 817.4 Applications by importer.

(a) A separate application for specific authorization by the Secretary pursuant to § 817.6 for release of sugar by a Collector must be submitted to the Sugar Quota Group as provided in this section on appropriate copies of Form SU-3 entitled "Sugar Quota Clearance Record" not more than 10 days prior to the departure date stated thereon, showing the following information regarding the sugar to be delivered to a single refinery or importer from each cargo:

(1) Port and date of arrival: If the port is not known when the application is submitted, this information must be supplied before a Collector will be authorized to release the sugar.

(2) Name or other specific identification of the carrier.

(3) Name of the producing area, the port of departure, the date the carrier is expected to depart from such port, and if from Puerto Rico, or any area when the applicable quota or portion thereof is allotted, name of the processor of the sugar from sugarcane, and for direct-consumption sugar, the name of the refiner, if a person other than the processor.

(4) Name and address of the person to whom delivery is to be made from the importing carrier. If not known when an application is submitted, this information must be supplied before a Collector will be authorized to release the sugar.

(5) Separate quantities in pounds if crystalline, or in gallons if liquid, to be imported as shown on the application: (i) For further processing; (ii) for direct-consumption; (iii) subject to a separate quota or allotment; and (iv) for a purpose other than to fill a current quota.

(6) Name, address and authorized signature of the applicant.

(b) Any application made pursuant to paragraph (a) of this section constitutes a representation by the applicant that at the time the application is made:

(1) He has control of the quantity of sugar which is subject to shipment as specified;

(2) Firm commitment has been made by the shipping company for shipment as described on the application; and

(3) The date of departure of the carrier stated on the application is (i) the date specified to the applicant or shipper by the Master, Owner or Agent of such carrier as the expected departure date, or (ii) the date the shipper expects the carrier to depart based on the date the carrier will be available for loading as specified by the Master, Owner, or Agent of such carrier, plus the normally required loading time.

(c) The application specified in paragraph (a) of this section shall be submitted to the Sugar Quota Group for the issuance of an authorization by the Secretary to the appropriate Collector for the release of sugar as provided in § 817.5.

(d) The specific authorization by the Secretary required pursuant to § 817.5 may be issued prior to the receipt of an application and appropriate copies of the "Sugar Quota Clearance Record" provided (1) such authorization is necessary to avoid a delay in unlading a carrier that has arrived in port, or the arrival of which is imminent, and (2) all of the information required pursuant to paragraph (a) of this section is transmitted to the Sugar Quota Group by telegram and the required application is being mailed the same day.

(e) (1) With respect to importations of sugar from foreign countries, application for set-aside of quota or quota proration for the importation of a specified quantity of sugar may be made to the Sugar Quota Group and approved, as provided in this subparagraph (1). Such application for set-aside shall be in the form of a Set-Aside Application and Agreement Form SU-8-A as hereafter set forth. The submission of a Set-Aside Application does not relieve the applicant of the necessity of submitting an application for authorization for release of sugar as required under paragraph (a) of this section. Any application for set-aside of quota or quota proration submitted pursuant to this subparagraph (1) covering a quantity of sugar to be imported within a quota or quota proration established in Part 811 of this chapter for a specified foreign country, or a quantity of sugar to be imported within a quota deficit quantity established for allocation or allocated in Part 811 of this chapter may be approved by the Secretary, except as limited by any time periods specified in Part 811 of this chapter, not more than 75 days prior to the first day of the 3-month importation period stated in the Set-Aside Application and Agreement. During the period from the date of approval of a set-aside application through the 15th day after the end of the importation period stated therein, both dates inclusive, and subject to the terms and conditions of such Application and Agreement, the quota and quota proration designated in the application shall be set aside to the extent of the quantity of sugar approved for set-aside under such Application and Agreement. A sugar quota set-aside agreement would not be effective to reserve a quota in the event that the President acting under section 202(d)(1)(B) of the Act withholds or suspends the quota applicable to the sugar covered by the set-aside agreement, since the agreement is necessarily based on there being a quota in effect at the time of importation.

(2) Set-Aside Applications and Agreements submitted pursuant to subparagraph (1) of this paragraph shall be submitted in duplicate on Form SU-8-A to provide the following information and certification:

SUGAR QUOTA SET-ASIDE APPLICATION AND AGREEMENT

I, _____ of
(Name of applicant)

_____
(Street address) (City) (State)

hereby certify that as owner, or as agent or broker for the owner, I have under my sole control _____ short tons (commercial weight) of sugar in _____
(Name of country)

and I hereby make application under the provisions of § 817.4(e)(1) of Sugar Regulation 817 for the set-aside of that quantity of the quota or quota proration for such country established in Sugar Regulation 811.

I agree that in consideration of the approval of this application I will import the sugar into the continental United States during the 3-month importation period specified in this agreement in accordance with the provisions of this agreement and applicable provisions of Sugar Regulation 817 and 811.

It is hereby agreed by and between the United States of America and the undersigned that the failure to import the quantity of sugar approved for set-aside of quota or quota proration pursuant to this application will substantially damage the program established under the Sugar Act of 1948, as amended, for providing supplies of sugar to be consumed at prices that will not be excessive to consumers in the United States; that the amount of such damages is very difficult to accurately estimate; that the undersigned will pay liquidated damages to the United States of 0.50 cent per pound for each pound of sugar approved for set-aside of quota or quota proration under this application which is not imported into the continental United States on or before the 15th day after the end of the importation period stated in this application, except that no liquidated damages shall be paid (i) for a quantity of sugar not imported which is within an allowance for normal shipping losses and normal loading variations equal to the smaller of 11 per centum of the quantity imported (commercial weight) or 5,000 tons, and (ii) for sugar not imported with respect to which the applicant, within a period of time prescribed by the Administrator, Agricultural Stablization and Conservation Service, U.S. Department of Agriculture, furnishes evidence satisfactory to the Administrator that importation within the period ending 15 days after the end of the importation period stated in this application was prevented by disasters at sea, acts of God, strikes so extensive and of such duration as to prevent such importation, or the occurrence of an insuperable and extraordinary interference which could not have been

foreseen or prevented by the applicant's exercise of prudence, diligence, and care.

I further certify that I have arranged for and will deposit an irrevocable letter of credit within 3 business days after the approval date of this application and agreement expiring no earlier than 60 days after the end of the importation period stated in this agreement, issued by _____ (Name and _____ in an amount not less address of bank) than an amount determined by multiplying the total number of tons stated in this application by 2,000 and multiplying the product thereof by 0.5 cent. It is further agreed that such letter of credit shall authorize the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, to draw upon the letter of credit on the basis of a written statement signed by the Administrator, Agricultural Stabilization and Conservation Service, or his authorized representative, which sets forth that a specified amount is due as liquidated damages under the terms and conditions of this Application and Agreement. It is further agreed that if such letter of credit or a wire notice from a U.S. bank of the issuance of such letter of credit, as described above is not received by the Agricultural Stabilization and Conservation Service within 3 business days after the approval date of this Application and Agreement as furnished to the applicant from the Sugar Quota Group, any approval of this Application and Agreement will be canceled and this Application and Agreement shall be null and void.

In the event the full quantity applied for cannot be approved, I will accept a smaller quantity of not less than _____ short tons, commercial weight.

Importation period: The sugar covered by this agreement will be imported during the 3-month period beginning _____, and (Date) ending _____. (Date)

Solely for the general guidance of the U.S. Department of Agriculture, I anticipate that the sugar will arrive as follows:

Month	*Short tons, commercial weight*
_____	_____
_____	_____
_____	_____

Signed _____
Title _____

Date _____

Approved as Set-Aside No. _____, for _____ short tons (commercial weight), on _____. (Date)

By _____ (Head, Sugar Quota Group)

(f) (1) Any application made pursuant to this section for authorization for release, pursuant to § 817.5 of sugar to be imported within a quota for foreign countries shall contain the following certification by the applicant, except that the last sentence may be omitted if not applicable:

The applicant certifies that the sugar identified herein was produced from (sugarcane) (sugar beets) grown in the producing area identified herein, and that this sugar is to be imported within the quota established for such area in Sugar Regulation 811. The sugar covered by this application is being imported under application for set-aside number _____ approved _____, and such quantity (does) (does not) fully discharge the obligation to import under the terms of that set-aside agreement.

(2) Any application made pursuant to this section for a purpose stated in § 817.8 shall contain the applicant's agreement and certification as follows, except that the last sentence may be omitted if the sugar is to be further refined or improved in quality:

This application is made subject to the conditions of bond on Form SU-17 number _____ (Insert bond number, if already approved) on which _____ (Insert name _____ principal, and _____ of bond principal) _____ of _____ (Address of surety) is surety, under which all of the sugar authorized on this application to be brought or imported into the continental United States is to be _____ (Insert one of the purposes stated in paragraph (b) of § 817.8)

The applicant certifies that the sugar covered by this application was produced from (sugarcane) (sugar beets) grown in the producing area as identified on the application. The applicant further certifies that the sugar is not to be further refined and that the identical sugar will be ultimately delivered to the person who will use such sugar or an equivalent quantity, for the stated quota-exempt purpose.

(g) (1) Within 30 days after release by the Collector pursuant to § 817.5, of sugar declared to be for further processing, the results of weights, samples and tests and the name of the person retaining the reserve portion of each sample as provided for in Part 810 of this subchapter shall be reported to the Sugar Quota Group on the applicable copy of the "Sugar Quota Clearance Record," Form SU-3, or a duplicate of such copy, together with information specified in paragraph (a) of this section. The period within which the report required pursuant to this paragraph must be made may be extended for good cause shown with respect to a specified shipment upon request to and approval by the Secretary.

(2) Within 60 days after release by the Collector pursuant to § 817.5 of sugar declared to be for direct-consumption, the weight of such sugar actually imported into the continental United States and the polarization of such sugar shall be reported to the Sugar Quota Group on the applicable copy of the "Sugar Quota Clearance Record," Form SU-3, or a duplicate of such copy together with the information specified in paragraph (a) of this section. For the purpose of such report, the polarization of such sugar shall be reported as 100° polarization unless the sugar is actually subjected in the continental United States to the applicable sampling, testing and evaluation as provided in §§ 810.6, 810.7 and 810.8 of this subchapter. For the purpose of such report, the weight reported on sugar imported from foreign countries shall be the weight of such sugar determined by the Collector at the time of unlading or entry of such sugar and on sugar brought into the continental United States from domestic areas shall be the weight of such sugar determined by the importer and the carrier of such sugar for purposes of settlement with the carrier.

§ 817.5 Release by a Collector.

A Collector may release sugar from any area for any purpose only upon specific authorization by the Secretary pursuant to § 817.6 with respect to each application, required under § 817.4, except that the quantities for which no application is required pursuant to § 817.3 may be released by a Collector at any time, and except that raw sugar produced from sugarcane grown in Hawaii coming to the port of San Francisco for further processing may be released by the Collector without authorization by the Secretary, unless the Collector is notified by the Department not to release such sugar thereafter without authorization by the Secretary. Unless instructed to the contrary on Form SU-3-B, Collectors may release without further authorization, sugar in excess of the quantity authorized on a specific authorization, within a tolerance not to exceed the smaller of 1 percent of the authorized quantity or 4,000 pounds.

§ 817.6 Specific authorization for release.

(a) *Time of issue and duration of validity.* Specific authorizations by the Secretary for release by a Collector will be issued no more than 5 days prior to the stated date of departure of the carrier on which the sugar is to be shipped. The authorization shall be valid for the period specified thereon, subject to extension by the Secretary for good cause. In case the port of arrival or the name of the receiver is not known when the application becomes eligible pursuant to paragraph (b) of this section, the authorization will not be transmitted to the Collector until all the information required by paragraph (a) of § 817.4 is received by the Sugar Quota Group.

(b) *Order of eligibility of applications for authorizations for release of sugar and for the set-aside of quantities for future release.* The order of eligibility for authorization or approval of applications provided for in this paragraph (b) is subject to such modifications as are specified in Part 811 of this chapter. An application on "Sugar Quota Clearance Record," Form SU-3 for authorization to a Collector for the release of sugar which is not being imported under an application for set-aside approved under § 817.4 (e) shall become eligible for authorization at 12:01 a.m. on the fifth calendar day prior to the date stated on the application as the date of departure of the shipment of sugar from the producing area or at the time of receipt of the application, whichever time occurs later. An application for set-aside submitted pursuant to § 817.4(e) shall become eligible for approval at 12:01 a.m. on the first day that such application for set-aside may be approved as provided in § 817.4(e), or at the time of receipt of the application, whichever time occurs later. The Secretary shall authorize the release by the Collector of sugar not being imported under an application for set-aside and approve applications for

set-aside in the same order as such applications for release or set-aside become eligible for authorization or approval. If an application for the release of sugar and an application for set-aside applicable to the same quota become eligible for authorization and approval at the same time, the application for release of sugar shall have priority. If two or more applications for the release of sugar applicable to the same quota become eligible for authorization at the same time, such applications shall be authorized in the order of the date of departure stated thereon, earliest first. If two or more such applications state the same dates of departure and the unfilled balance of the quota or quota proration is less than the total quantity of sugar covered by such applications, the quantity authorized for release under each such application shall be authorized in the order of the date of arrival stated thereon, earliest first, and if any applications then remain having the same date of arrival the authorizations will be made as follows: An equal share of the quota balance shall be calculated by dividing such balance by the total number of such applications. All such applications that cover a quantity in each application less than such equal share shall be approved. The total of such approved quantities shall be deducted from the quota balance. The remaining quota shall be divided equally among the remaining applications but not to exceed the quantity applied for in any such applications, and the quantity assigned to each such remaining application as a result of such division shall be authorized for release under such application. If two or more applications for set-aside received from separate applicants become eligible at the same time and the unfilled balance of the quota or quota proration is less than the total quantity of sugar covered by such applications, no approvals will be made until the applicants have been consulted and agreement between them has been reached as to the quantities to be approved for each application. If the Secretary determines that such an agreement has not been reached by a date specified by him in writing to the applicants, the quantity to be approved under each application shall be determined by the same method described above for issuing authorizations when applications for release have the same date of arrival.

(c) *Substitution.* Release of a quantity of sugar subject to a quota or allotment may be authorized by the Secretary after such quota or allotment has been filled, provided an equivalent quantity of sugar previously released pursuant to § 817.5 within the same quota or allotment has been delivered into the custody of a Collector. The Collector shall retain custody of such equivalent quantity of sugar in accordance with § 817.3(e) until released pursuant to § 817.5.

(d) *Importation for quota-exempt purposes.* Authorization may be issued by the Secretary on applications for release of sugar in excess of the applicable quota or not covered by a quota for the purposes stated in sections 211 and 212 of the Act subject to the limitations specified in those sections and the conditions established in § 817.8.

(e) *Extent of authorizations.* Except as provided in paragraphs (c) and (d) of this section, no authorization shall be issued pursuant to paragraph (a) of this section and no application for set-aside shall be approved as provided in § 817.4 (e) when the quantity of sugar released for consumption in the continental United States, together with the quantity covered by valid authorizations for release or applications for set-aside issued or approved hereunder, equals the applicable quota.

(f) *Denial of authorizations and approval of applications for set-aside.* Authorizations on applications for release of sugar and approval of applications for set-aside may be denied if the applicant has failed to report in the manner and within the time prescribed in this part with respect to shipments previously imported or quantities covered by approved applications for set-aside and shipped to the continental United States, or if any information on an application or set-aside agreement previously submitted and approved is determined not to have been substantially correct, and the applicant fails to submit information satisfactory to the Administrator Agricultural Stabilization and Conservation Service that the incorrectness was due to causes beyond the control of the applicant or due to honest error.

§ 817.7 Applicable quota, quota proration, allocation, quantity, and allotment.

(a) Sugar imported other than as provided in § 817.8 shall be subject to any quota, proration of a quota or allocation for the producing area as shown on the application provided for in § 817.4, except that application may be made to import sugar pursuant to section 202(d)(2)(A) of the Act within the quantity available for foreign countries as a group and except that if the Secretary determines that the producing area shown on the application is incorrect, such sugar shall be subject to any quota, proration or allocation for the correct producing area as determined by the Secretary. Sugar from more than one producing area may not be commingled on the same carrier unless arrangements in writing have been made to furnish documents to the Sugar Quota Group that will provide a basis for satisfactorily and properly effecting the charges to the quotas of the respective producing areas.

(b) *Allotment.* (1) When the quota which is applicable pursuant to paragraph (a) of this section has been allotted pursuant to section 205(a) of the Act, the sugar imported pursuant to the application shall be subject to the allotment made to the person named thereon as the allottee if the application is made by (i) such allottee; (ii) a person authorized by the allottee by letter to the Sugar Quota Group to make such representations on behalf of the allottee for all or a specified portion of his allotment for the designated year, or (iii) an applicant who purchased the sugar from the allottee or a person holding an authorization under subdivision (ii) of this subparagraph. The quantity of sugar stated on an application as subject to the allotment of the allottee named thereon shall not exceed the supply of sugar processed by such allottee which was not previously marketed pursuant to Part 816 of this subchapter or previously imported or applied for pursuant to this part.

(2) Nothing in this paragraph shall preclude the Secretary from applying imported sugar to fill the allotment of the allottee who processed such sugar in any case where he determines that the foregoing provisions of this paragraph have been evaded, not complied with or are inapplicable. The term "processed" as used in this paragraph means the production of sugar from sugarcane or the production of direct-consumption sugar from raw sugar.

(c) *Quantity and time of effect.* (1) Each quantity authorized for release pursuant to § 817.6 and each quantity covered by an application for set-aside approved pursuant to § 817.4(e) shall be effective for filling the applicable quota as established in Part 811 of this subchapter at the time the applicable authorization is issued or application for set-aside is approved. Each quantity of sugar produced from sugarcane grown in Hawaii coming to the port of San Francisco and released by the Collector without authorization by the Secretary to the Collector as provided in § 817.5 shall be effective for filling the Hawaiian quota at the time the authorization is issued to the importer. For the purposes of this paragraph the raw value of the authorized quantity shall be estimated by considering the relationship between other authorized quantities for recent shipments from the same producing area and the raw values thereof determined as provided in Title I of the Act on the basis of weights and tests determined pursuant to Part 810 of this subchapter and such other factors as the Secretary deems applicable.

(2) Upon receipt of and on the basis of the report required pursuant to § 817.4 (g) for raw sugar or direct-consumption sugar covering an application initially given effect pursuant to subparagraph (1) of this paragraph, the quantity effective for filling the applicable quota shall be the quantity of sugar imported pursuant to the authorization represented by either raw or direct-consumption sugar, determined as prescribed in Part 810 of this subchapter to the extent of its raw value, as defined in Title I of the Act and as finally computed from the weights and tests determined pursuant to Part 810 of this subchapter, except that the raw value of liquid sugar imported from Puerto Rico shall be computed by multiplying the total sugar content thereof by the factor 1.07.

(3) Whenever the Secretary determines that (i) a default in a condition of a bond accepted pursuant to § 817.9

has occurred or, (ii) a quantity of sugar authorized for release for importation as raw sugar is direct-consumption sugar pursuant to § 810.5(c) of this subchapter by virtue of its use for which authorization pursuant to § 817.3(g) was not granted, or (iii) a quantity of sugar has been imported without authorization for release as required pursuant to § 817.5, the quantity of sugar involved in such default, change of purpose, or importation without authorization shall be applied to the applicable quota or allotment in effect for the year in which the importation occurred after all importations made in accordance with the regulations of this part to which the same quota and allotment were applicable have been applied thereto.

§ 817.8 Authorization for purposes other than to fill current quotas.

(a) Upon fulfillment of the requirements of §§ 817.3 and 817.4 and the applicable provisions of this section and § 817.9, the authorization required pursuant to § 817.5 may be given to the Collector to release sugar for importation for the purposes specified in this section without effect on a quota at the time of importation, except that sugar may not be imported pursuant to this section from any country with which the United States is not in diplomatic relations or from any country whose quota has been withheld or suspended by the President pursuant to section 202(d)(1)(B) of the Act. Accordingly, the application required by § 817.4 must show that the sugar covered by such application was produced from sugar beets or sugarcane grown in the producing area as identified on the application.

(b) Sugar may be released for importation by or delivery to the principal on a bond accepted pursuant to § 817.9 to fulfill the following purposes:

(1)(i) Entries of sugar processed from sugarcane grown in Hawaii or Puerto Rico consigned to a continental United States refiner for the express purpose or refining and/or repackaging for subsequent return of an equivalent quantity to the producing area for consumption therein, and (ii) exportations as sugar within the provisions of section 313 of the Tariff Act of 1930, as amended, or direct shipment (otherwise than under the provisions of section 313 of the Tariff Act of 1930, as amended) as sugar by the importer or refiner to a territory or possession of the United States, excluding the Virgin Islands. (Sugar shipped to Hawaii or Puerto Rico is subject to the provisions of section 211(c) of the Act and the applicable provisions of regulations of the Secretary establishing (*a*) sugar requirements and quotas for Hawaii and Puerto Rico, (*b*) allotments of sugar quotas for Hawaii and Puerto Rico, and (*c*) requirements relating to the marketing of sugar for consumption in Hawaii and Puerto Rico. Section 209(e) of the Act prohibits the importation into the Virgin Islands for consumption therein of any sugar in excess of 100 pounds in any calendar year produced from sugarcane or sugar beets grown in any area other than Puerto Rico, Hawaii or the continental United States.)

(2) Manufacture and exportation of other articles within the provisions of section 313 of the Tariff Act of 1930, as amended.

(3) Distillation of alcohol, including all polyhydric alcohols, or production (other than by distillation) of alcohol, including all polyhydric alcohols, but not including any such alcohol or resulting byproducts for human food consumption.

(4) Sugar for livestock feed or for the production of livestock feed. For the purposes of the regulations of this part:

(i) "Livestock" shall mean horses, mules, cattle, swine, sheep, goats, poultry, and honey bees;

(ii) "Sugar for livestock feed" shall mean sugar used for feeding livestock by the person who received such sugar, excluding any sugar received as an ingredient of a mixture or product;

(iii) "Sugar for the production of livestock feed" shall mean sugar, excluding any sugar contained as an ingredient of a mixture or product, put into a mixing or manufacturing process that produces only feed for livestock; and

(iv) "Sugar for livestock feed or for the production of livestock feed" also means any livestock feed product containing sugar in excess of 50 percent by weight or value entering the United States or Puerto Rico for use as livestock feed from a foreign country, a Foreign Trade Zone, or from Customs Custody, and such product shall be subject to the provisions of this part.

(c) The remaining portion of the single shipment of raw sugar of which a portion is authorized for importation pursuant to § 817.6 as the final quantity to fill the applicable calendar year quota or the applicable quarterly limitation, may be authorized for release for importation by or delivery to a refiner who is the principal on a bond accepted pursuant to § 817.9 under which the principal is obligated to hold the sugar so imported or an equivalent quantity at the refinery, at which such sugar was received until release within the applicable quota or allotment is authorized by the Secretary: *Provided,* That the remaining portion of the single shipment so authorized for release shall be limited to the smaller of either 5 percent of the applicable calendar year quota or 5,000 short tons, raw value, or the smaller of 10 percent of the applicable quarterly limitation or 5,000 short tons, raw value.

(d) Whenever the Secretary has given public notice that such action will not interfere with the effective administration of the Act, raw sugar may be authorized for release for importation by or delivery to a refiner who is the principal on a bond accepted pursuant to § 817.9 under which the principal is obligated to hold the sugar or an equivalent quantity subject to such conditions as may be specified in such notice until release within the applicable quota or allotment is authorized by the Secretary.

(e) Upon fulfillment of the requirements of §§ 817.3 and 817.4 the authorization required pursuant to § 817.5 may be issued to the Collector for the release of sugar for purposes stated in section 212 of the Act other than those specified in paragraph (b) of this section, within the limitations specified in such section 212 of the Act.

§ 817.9 Bonds to cover releases.

(a) No authorization for the purposes specified in § 817.8 (b), (c), and (d) shall be issued nor shall a Notice of Delivery which covers the delivery of a quantity of sugar to the principal of another bond be accepted until the Secretary has accepted a bond meeting the requirements of this section. The Secretary may accept a bond to cover importations or deliveries which may be made during the period of time specified in the bond or for a specified importation or delivery.

(b) *Principal and surety.* Any person having an interest therein may be the principal on the bond covering sugar to be exported with benefit of drawback of duty, or covering sugar for the distillation or production of alcohol other than by distillation, including all polyhydric alcohols. Only the importer or refiner may be the principal on a bond to cover sugar to be shipped to a territory or possession of the United States or used for livestock feed, or for the production of livestock feed. Only a refiner may be the principal on a bond covering sugar to be imported for further processing as provided for in § 817.8 (c) and (d). The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(c) *Obligation*—(1) *Establishment and effective date.* The obligation under the bond shall be made effective and be established by: (i) The Secretary's issuance of the authorization required pursuant to § 817.5 for release of the sugar by the Collector; or (ii) the Secretary's acceptance of a Notice of Delivery covering a quantity of sugar delivered by the principal of a bond to the principal of another bond pursuant to subparagraph (1)(iii) of paragraph (d) of this section, such Notice of Delivery to be executed jointly by the principals of the two bonds involved on a form prescribed by the Secretary.

(2) *Monetary amount.* The monetary amount of the obligation under the bond shall not be less than the sum of the amounts applicable to all quantities of sugar covered at any one time thereunder by virtue of the issuance of authorizations required pursuant to § 817.5 for release of sugar by the Collector or acceptance of Notices of Delivery, and such obligations shall be effective whether or not the surety receives notice from the Secretary of the issuance of such an authorization or the acceptance of a Notice of Delivery. The monetary amount applicable to each quantity of sugar covered by each authorization for release of sugar by the Collector or by each Notice of Delivery, and made subject to a bond accepted under this Part shall be the "spot" quotation per pound of raw sugar deliverable on the

New York Coffee and Sugar Exchange under Contract No. 10 as established by that Exchange for the last business day before the date of application to the Secretary for the issuance of such authorization, or before the delivery date or the last date of the delivery period shown on such Notice of Delivery multiplied by the weight in pounds of such quantity of sugar. The amount applicable to each quantity of liquid sugar covered by each authorization for release of liquid sugar by the Collector or by each Notice of Delivery shall be computed upon the basis of the same price per pound, ascertained as heretofore stated in this paragraph, multiplied by the pounds of the "total sugar content," as defined in section 101(i) of the Act, of such quantity of liquid sugar. The quantity of sugar covered by each authorization required pursuant to § 817.5 for release by the Collector or by each Notice of Delivery shall be the quantity stated in the Notice of Delivery or in the application submitted on the Sugar Quota Clearance Record, or the quantity stated in the report made to and received by the Sugar Quota Group in accordance with § 817.4(g) if differing from the quantity stated in the authorization for release of sugar by the Collector.

(d) *Conditions.* Any bond accepted pursuant to this part shall provide for the following conditions to apply to sugar authorized to be release by the Collector pursuant to the provisions of § 817.8.

(1) Consistent with the certification required pursuant to § 817.4(f)(2), the identical sugar, or the raw value equivalent of the sugar, authorized under the bond to be imported for the purpose of exporting sugar shall be:

(i) Exported within 6 months after the date of importation with drawback of duty subsequently allowed pursuant to section 313 of the Tariff Act of 1930, as amended, as evidenced by the reports of such exportation and allowance from the principal and the Collector as provided for in paragraph (e) of this section;

(ii) Shipped within 6 months after the date of importation to a territory or possession of the United States other than the Virgin Islands as evidenced by the report by the principal of such shipment as provided for in paragraph (e) of this section, or

(iii) Delivered within 6 months after the date of importation to the principal on another bond accepted pursuant to this section.

(2) Consistent with the certification required pursuant to § 817.4(f)(2), the identical sugar, or the raw value equivalent of the sugar, authorized under the bond to be imported, or authorized to be delivered subsequent to importation under another bond, for the manufacture of products to be exported, shall be exported in manufactured products within 3 years after the date of importation of the sugar with drawback of duty subsequently allowed pursuant to section 313 of the Tariff Act of 1930, as amended, as evidenced by the reports of such exportation and allowance of drawback by the principal and the Collector, as provided for in paragraph (e) of this section;

(3) Consistent with the certification required pursuant to § 817.4(f)(2), the identical sugar, or the raw value equivalent of the sugar, authorized under a bond to be imported for the distillation or production of alcohol or for livestock feed, or for the production of livestock feed, shall be so used within 1 year after the date of importation as subsequently evidenced by a certificate of use as provided for in paragraph (e) of this section. The use of sugar for livestock feed or the production of livestock feed shall be as provided in § 817.8(b)(4).

(4) The raw value equivalent of the raw sugar authorized under a bond to be imported by or delivered to a refiner pursuant to the provisions of § 817.8(c) shall be held at the refinery at which such sugar was received until release of such sugar within the applicable quota is authorized by the Secretary.

(5) The raw value equivalent of the raw sugar authorized under a bond to be imported by or delivered to a refiner pursuant to the provisions of § 817.8(d) shall be held by the refiner subject to such conditions as may be specified in the public notice given by the Secretary authorizing the release for importation of sugar for the purpose specified in paragraph (d) of § 817.8.

(6) Any bond furnished pursuant to this part shall provide that the obligation established thereunder will remain in full force and effect until the Secretary notifies the principal and surety of release thereof. The Secretary may release all or any part of the monetary amount of the obligation of the bond which is applicable to the quantity of sugar covered by an issued authorization for release thereof by a Collector or by an accepted Notice of Delivery with respect to which quantity either the applicable conditions set forth in subparagraphs (1) through (5) of this paragraph have been fulfilled, or another bond has been accepted: *Provided*, That, nothing in this section shall preclude the Secretary from: (i) Accepting evidence other than that provided for in subparagraphs (1), (2), and (3) of this paragraph to establish that any of the conditions provided in such subparagraphs have been fulfilled, or (ii) determining that any of the conditions provided in subparagraphs (1) through (5) of this paragraph have been fulfilled by virtue of the destruction or other disposition of sugar having an effect for quota purposes as if the applicable conditions set forth in such subparagraphs have been fulfilled, or (iii) extending at his discretion the time for fulfillment of any of the conditions set forth in subparagraphs (1) through (5) of this paragraph upon the written request of and for good cause shown by the principal named on the bond and without notice to the surety on such bond.

(7) Upon default in any applicable condition heretofore set forth, and the expiration of any extension of time for fulfillment thereof that may be granted in writing by the Secretary, payment shall be made to the United States of America of a sum equal to the full amount of the obligation determined as prescribed in paragraph (c) of this section which is applicable to the quantity of sugar covered by an authorization for release of sugar by the Collector or by a Notice of Delivery, and with respect to which quantity the default occurred in whole or in part.

(8) The payment or the acceptance of any payment made to the United States of America pursuant to this paragraph shall not be deemed to preclude or to constitute a waiver of recovery of any forfeiture, penalty or liability provided for by the Act or any other provision of law.

(e) *Reports of evidence that conditions of bond have been fulfilled.* (1) All principals on bonds given for the purpose specified in § 817.8(b)(1) or (2) shall, by the 10th of each month, submit a report to the Sugar Quota Group showing the following information: (i) With respect to allowances of drawback of duty for exportations for which drawback of duty was allowed in the month preceding the month in which the report is submitted, the identity, by number, of the bond to which the exported quantity of sugar should apply, the date of exportation of the sugar, the quantity of sugar exported or used in the manufacture of the exported sugar or the sugar used in the manufacture of the exported articles, the port and date of entry or withdrawal of the sugar designated as a basis for drawback of duty and the consumption entry or warehouse withdrawal number, the country of origin of the sugar designated as a basis for drawback of duty, and the quantity and polarization or, if liquid sugar, the total sugar content of the designated liquid sugar on which drawback of duty was allowed; and (ii) with respect to sugar shipped to a territory or possession of the United States within the preceding month; the identity, by number, of the bond to which the shipped quantity of sugar should apply, the date of shipment and the destination of the sugar and the producing area of the shipped sugar.

(2) The principal on a bond given for a purpose specified in § 817.8(b)(3) or (4) shall transmit to the Sugar Quota Group no later than 30 days after the 1-year use period provided for in § 817.9(d)(3) or authorized extension thereof, certificates executed by the persons who used the sugar showing the following information on forms prescribed by the Secretary as follows:

(i) In the case of use for distillation or production of alcohol, Form SU-23A:

The undersigned hereby certifies that between _____, 19__ and _____, 19__, he has used the following quantity or quantities of liquid or crystalline sugar for the purpose or purposes indicated:

[Pounds]

Use	Liquid	Crystalline	
	Sugar content	Actual weight	Raw value weight
(1) Used for distillation of alcohol			
(2) Used for production of alcohol (other than by distillation) for other than human food consumption			

The undersigned further certifies that the quantity of sugar shown on this certification of use does not include any sugar previously covered by another U.S. Department of Agriculture Certificate of Use; that the quantity shown on this certificate does not include any sugar previously credited or subsequently to be credited against an obligation on a bond covering sugar exported in a sugar-containing product and that none of the sugar shown on this certificate was used in the production (other than by distillation) of alcohol, including any resulting byproducts, for human food consumption.

(ii) In case of use for livestock feed or production of livestock feed, Form SU-23:

The undersigned certifies that between _____, 19__ and _____, 19__, he
(Date) (Date)
has used the following quantity or quantities of sugar for the purpose or purposes as stated below:

	Pounds
(1) Use to feed livestock	
(2) Used in the production of livestock feed:	
(a) For his subsequent use in feeding livestock	
(b) For subsequent sale to others for feeding livestock	

The undersigned further certifies that each quantity of sugar shown in this Certificate of Use does not include a quantity of sugar previously covered by another U.S. Department of Agricultural Certificate of Use; that any quantity of sugar shown on this certificate used to feed livestock or for the production of livestock feed does not include any sugar contained as an ingredient of a mixture or product at the time such sugar was received except sugar imported as a livestock feed product containing sugar in excess of 50 percent by weight or value; that such sugar was either fed to livestock by the person receiving it or was put into a mixing or manufacturing process that produces only feed for livestock; and that the term "livestock" as used throughout this certificate means horses, mules, cattle, swine, sheep, goats, poultry, and honeybees.

Each certificate shall be endorsed by the principal of the bond acknowledging that the use of the sugar, to which the certificate applies, is to apply to the fulfillment of the conditions of the bond on which he is the principal and the bond shall be identified on the endorsement.

(3) Each Collector shall, by the 10th of each month report all allowances of drawback in the preceding month which were based on exportations of sugar or manufactured sugar-containing articles. Such report shall show the following information: The person who manufactured the exported product and the date of exportation; and with respect to the sugar designated as a basis for the claim for drawback of duty, the date and port of entry or withdrawal, the consumption entry or warehouse withdrawal number (if warehouse withdrawal numbers of a separate series are not assigned, the warehouse entry number should be furnished), the producing area, the quantity and polarization or, if liquid sugar, the total sugar content, on which drawback was allowed.

(4) Each refiner who is a principal on a bond given for the purpose specified in either paragraph (c) or (d) of § 817.8 shall furnish to the Secretary at his request such information as the Secretary requires to determine that such refiner has met the inventory requirements pursuant to the applicable bond obligation.

§ 817.10 Sugar-containing products and mixtures.

NOTE: The basis and purpose and bases and considerations for this § 817.10 have been set forth fully in the FEDERAL REGISTER at 31 F.R. 16518 and 31 F.R. 9495.

(a) The importation or bringing into the continental United States, Hawaii, or Puerto Rico of any sugar-containing product or mixture shall not be subject to any import quantity limitations pursuant to the provisions of this part unless and until the Secretary has made effective a determination that the prospective importation of such sugar-containing product or mixture will substantially interfere with the attainment of the objectives of the Act. A proceeding to make a determination required by this section as well as any amendment or repeal thereof will be instituted by the Secretary either upon the Secretary's own initiative, or upon the written petition of an interested person if the Secretary has reasonable grounds to believe, on the basis of information accompanying the petition and other information available to him, that there may be a substantial interference with attainment of the objectives of the Act. Petitions should be submitted to the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. A proceeding to make a determination that the importation or bringing into the continental United States, Hawaii, or Puerto Rico of a sugar-containing product or mixture will or will not substantially interfere with the attainment of the objectives of the Act, or an amendment or repeal of such a determination, shall be instituted by publishing a notice of the proposed rule making, and affording interested persons an opportunity to submit written data, views, and arguments and to submit the same orally if provision is made therefore in the notice. The determination shall be published in the FEDERAL REGISTER. A determination may pertain to one or more sugar-containing products or mixtures or a group of similar sugar-containing products or mixtures. In making a determination that the bringing in or importing of a sugar-containing product or mixture will or will not substantially interfere with the attainment of the objectives of the Act, the Secretary shall give consideration to (1) the total sugar content of the product or mixture in relation to other ingredients therein or to the sugar content of other products or mixtures for similar use; (2) the costs of the mixture in relation to the costs of its ingredients for use in the continental United States, Hawaii, or Puerto Rico; (3) the present or prospective volume of importations relative to past importations of the product or mixture; (4) whether it will be marketed to the ultimate consumer in the identical form and package in which it is imported or the extent to which it is to be further subjected to processing or mixing with similar or other ingredients; and (5) other pertinent information. Information relating to the above listed factors should accompany any petition to the Secretary to institute a proceeding as provided in this section or shall be furnished by persons having such information upon request by the Secretary.

(b) If the Secretary has determined pursuant to paragraph (a) of this section that the prospective importation or bringing into the continental United States, Hawaii, or Puerto Rico of a sugar-containing product or mixture will substantially interfere with the attainment of the objectives of the Act, a total quantity of such sugar-containing product or mixture shall not be brought or imported into the continental United States, Hawaii, or Puerto Rico in any one year from any one country or area in excess of the quantity which the Secretary determines will not so interfere, but not less than (1) the average annual importations of the product or mixture from the country or area during the most recent 3 consecutive years for which reliable data are available; or (2) 100 short tons, raw value, of sugar content of the product or mixture from any one country or area in the event that no reliable data of quantities imported or brought in from the country or area for 3 consecutive years are available. Persons having information or data of quantities of a sugar-containing product or mixture imported or brought in during any of the most recent 3 consecutive years from a country or area may submit such information or data to the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, for consideration of its reliability for use.

(c) (1) Any sugar-containing product or mixture as to which the Secretary has determined that the actual or prospective importation or bringing thereof into the continental United States, Hawaii, or Puerto Rico will substantially interfere with the attainment of the objectives of the Act, shall not be imported or brought into the continental United States, Hawaii, or Puerto Rico until a release directed to the Collector has been obtained by the importer from the Secretary. If the Secretary or his delegate determines that the release of the product is permissible in accordance with limitations provided in paragraph (d) of this section such release will be issued upon application to the Sugar Quota Group, Policy and Program Appraisal Division, ASCS, U.S. Department

of Agriculture, Washington, D.C. 20250, in quintuplicate on a prescribed form designated as Form SU-9A. Application forms will be available from the above mentioned source and at all Customs Houses, and will provide for the following information regarding the product to be imported on each carrier:

The name and address of the importer.
The name of the carrier which is to transport the product to the U.S. port or point of entry.
The port or point of departure of such carrier.
The date of departure from such point or port.
The port or point of entry.
The date of arrival.
The quantity of product to be imported (total pounds or gallons).
The country of origin (where manufactured).
The name of the product.
Whether the identical product as packaged will be marketed to the ultimate consumer.
The percentage of sugar and each other ingredient in the product including moisture.
A certification that the information contained in the application is true and correct to the best of the importer's knowledge and belief and that he will furnish the Department within 30 days after importation the consumption entry or warehouse withdrawal number, the actual weight entered, and verification of the composition of the product.
The date submitted, signature and title of the person signing the application.

(2) An application for issuance of an authorization to a Collector for the release of a sugar-containing product or mixture shall become eligible for authorization at 12:01 a.m. of the fifth day prior to the date of departure of the shipment as stated on the application, or at the time of receipt of the application whichever time occurs later. An authorized application shall be canceled if the covered shipment does not leave the port or point of departure on or before the fifth day after the scheduled departure date as stated on such application, or if a duty-paid entry on such shipment is not made at the port of entry on or before 15 days after the scheduled arrival date as stated on such application, except that the period during which the application is valid may be extended by the Secretary. The entire quantity of an importer's shipment scheduled to depart on a carrier from the same port of departure, on the same date of departure, and having the same destination, must be covered by one application. The Secretary shall authorize applications for the release of sugar-containing products by the Collector in the same order as such applications become eligible for authorization or approval. If two or more applications covering products from the same country become eligible for authorization at the same time, such applications shall be authorized in the order of the date of departure, earliest first. If two or more applications for release submitted by different applicants become eligible for authorization at the same time and have the same date of departure and the quantity permissible for importation within the limitations provided in paragraph (d) of this section is less than the total quantity covered by such applications, the quantity authorized for release under each such application shall be determined as follows. An equal share of the quantity permissible for importation shall be calculated by dividing such quantity by the total number of such applications. All such applications that cover a quantity in each application less than such equal share shall be approved and the quantities stated therein shall be authorized for release. The total of the quantities covered by such approved applications shall be deducted from the quantity permissible for importation, the remainder shall be divided equally among the remaining applications but not to exceed the quantity applied for in any such application, and the quantity assigned to each such remaining application as a result of such division shall be authorized for release under such application.

(3) An application made pursuant to this section constitutes a representation by the applicant that at the time the application is made:

(i) He has control of the quantity of the product which is subject to shipment as specified;

(ii) Firm commitment has been made by the shipping company for shipment as described on the application; and

(iii) The date of departure of the carrier stated on the application is (*a*) the date specified to the applicant or shipper by the Master, Owner or Agent of such carrier as the expected departure date, or (*b*) the date the shipper expects the vessel to depart based on the date the carrier will be available for loading as specified by the Master, Owner or Agent of such carrier plus the normally required loading time.

(4) Authorizations of applications for the release of the sugar-containing product may be denied if the applicant has failed to report in the manner and within the time prescribed in this section with respect to a previous importation or if any information on an application previously submitted and approved is determined not to have been substantially correct, and the applicant fails to submit information satisfactory to the Administrator, Agricultural Stabilization and Conservation Service that the incorrectness was due to cause beyond the control of the applicant or due to honest error.

(d) It is hereby determined upon the basis and considerations set forth in F.R. Doc. 66-7654 (31 F.R. 9495) and 66-13856 (31 F.R. 16518) that prospective importation into the continental United States, Hawaii, and Puerto Rico of the following described sugar-containing products or mixtures will substantially interfere with the attainment of the objective of the Act and shall be subject to the import limitations provided in this paragraph (d) of this section: Products or mixtures which (1) contain more than 25 percent sugar expressed as a percent of the total weight of solids (excluding moisture and volatile matter); (2) contain solid ingredients other than sugar consisting principally of either butterfat or flour or both; and (3) either are to be further subjected to processing or mixing with similar, or other ingredients, or are not to be marketed to the ultimate consumer in the identical form and package in which imported. The total quantity of all such products or mixtures which may be imported during the calendar year 1967 from each of the following countries shall not exceed the amount stated as follows for such country, except that the total quantity of products or mixtures containing butterfat which may be imported from a foreign country is also subject to the quantity import limitations on butterfat containing products imposed by Presidential Proclamations issued pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624).

Country	*Pounds*
Australia	14,090,000
Austria	827,000
Belgium	14,090,000
Canada	11,650,000
Denmark	1,926,000
Sweden	397,000
United Kingdom	2,159,000
Any other country	(1)

[1] 100 short tons, raw value, or sugar content (dry basis), the equivalent of 187,000 pounds, refined sugar.

None of the described products or mixtures shall be imported except pursuant to the procedural requirements contained in paragraph (c) of this § 817.10.

§ 817.11 Records and reports.

(a) For the purposes of this part, any quantities of sugar imported as crystalline sugar which are subsequently converted into and marketed as liquid sugar shall be reported subsequent to such conversion as the quantities of crystalline sugar so converted and the raw value thereof shall be determined as prescribed in paragraph (1), (2), or (3) of section 101(h) of the Act, applicable to the crystalline sugar so converted. Liquid sugar, exclusive of that imported as liquid sugar, for which the quantities of converted crystalline sugar are unknown shall be reported in terms of the total sugar content and the raw value thereof shall be determined by multiplying the total sugar content by the factor 1.07.

(b) Each person subject to the provisions of this part shall keep and preserve, for a period of 2 years following the end of the calendar year in which the sugar was imported into the continental United States, an accurate record of the receipt, processing and movement of such sugar and of all tests, gallonages and weights pertaining thereto, except that all records relating to the receipt and disposition of sugar authorized for release pursuant to § 817.8 shall be kept and preserved for a period of 2 years following the end of the calendar year in which the sugar was disposed of pursuant to the requirements of § 817.9(d). Upon request by any authorized employee of the Department, such records shall be made freely available for examination by such employee during the regular working hours of any business day.

(c) Each person subject to the provisions of this part shall make application for authorizations provided for in this part and shall report information as and when required by the Secretary on forms specified by him and approved by the Bureau of the Budget under the Federal Reports Act of 1942. In addition to the applications, authorizations and reports otherwise specifically referred to in this part, this requirement shall include, but is not necessarily limited to, the information prescribed on Form SU-73 or Form SU-74 for refiners, or on Form SU-75 for other importers. The following described forms are available for use in accordance with the provisions of the regulations in this Part 817, and all may be obtained at the office of the Sugar Quota Group, Policy and Program Appraisal Division, Agricultural Stabilization and Conservation Service, Room 6622 South Building, United States Department of Agriculture, Washington, D.C. 20250. In addition, Forms SU-3, SU-8A and SU-9A are generally available at Customs Houses at principal ports of entry.

FORMS

SU-3—Sugar Quota Clearance Record.
SU-8A—Sugar Quota Set-Aside Application and Agreement.
SU-9A—Application for Release of a Sugar Containing Product or Mixture.
SU-17—Bond for Entry of Sugar Without Charge to Quota.
SU-18—Notice of Delivery of Quota-Exempt Sugar for Manufacture of Articles for Export.
SU-19—Monthly Report of Drawback Allowances.
SU-20—Report of Exportations and Allowances of Drawback to Fulfill Conditions of Bonds.
SU-20-1—Report of Shipments to Territories or Possessions in Fulfillment of Conditions of Bonds.
SU-23—Certificate of Use of Sugar for Livestock Feeding or Production of Livestock Feed.
SU-23-A—Certificate of Use of Sugar for Distillation or Production of Alcohol.
SU-63—Destination by States of Sugars Delivered for Direct Consumption.
SU-64—Sugar Deliveries by Type of Buyer.
SU-64-A—Dextrose Sales, Domestic, by Type of Buyer.
SU-73—Sugar Production and Movement Report—Refiners Who Also Process Mainland Sugarcane.
SU-74—Sugar Production and Movement Report—Refiners Who Do Not Process Mainland Sugarcane.
SU-75—Sugar Receipts and Movement Report (Importers Who Do Not Operate Refineries).

(d) Each person subject to the provisions of this part who applies for a set-aside which has been approved pursuant to § 817.4(e) shall report any quantity of sugar which has been shipped and which is to be imported into the continental United States under such application. Such report shall be made within 2 days after the date of departure of the sugar from the area of origin and shall show the date of departure, the quantity of sugar shipped and the expected date of arrival. An application for authorization for release of sugar as provided for in § 817.4(a) may be submitted within the same time limitation in lieu of the report required by this paragraph.

§ 817.12 Delegation of authority.

The Director, or Deputy Director, of the Sugar Policy Staff, the Director, Deputy Director of the Policy and Program Appraisal Division, or the Head, Sugar Quota Group of that Division (or any person in such division designated in writing by the Director), Agricultural Stabilization and Conservation Service of the Department, is hereby authorized to act on behalf of the Secretary in administering §§ 817.1 through 817.11 except as otherwise provided for in paragraph (e) of § 817.4, paragraph (f) of § 817.6 and paragraph (d) of § 817.8.

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[F.R. Doc. 67-12245; Filed, Oct. 17, 1967; 8:45 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Terms and Conditions Governing Use by Handlers of Identifying Marks Utilized by the Committee in Promotional and Advertising Projects

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, 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 and information submitted by the Texas Valley Citrus Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the amendment, hereinafter set forth, of the terms and conditions governing the use of identifying marks utilized by the committee in promotional and advertising projects (§ 906.137) is in accordance with the provisions of the amended marketing agreement and order and will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that, as hereinafter set forth, the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the use by handlers of the identifying marks "TEXASWEET" and "SWEETER BY NATURE" for grapefruit grown as aforesaid.

Therefore, the provisions of paragraph (a) and subparagraph (1) of § 906.137 are hereby amended to read as follows:

§ 906.137 Handlers use of identifying marks utilized by the committee in promotional and advertising projects.

(a) On and after October 16, 1967, the identifying marks "TEXASWEET" and "SWEETER BY NATURE" shall be available to handlers only under the following terms and conditions:

(1) The identifying marks "TEXASWEET" and "SWEETER BY NATURE" may severally or jointly be affixed only to containers of grapefruit or to individual grapefruit comprising a lot which grades at least U.S. Combination.

* * * * *

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

Dated, October 13, 1967, to become effective October 16, 1967.

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

[F.R. Doc. 67-12330; Filed, Oct. 17, 1967; 8:49 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[Rev. 3, Amdt. 4]

PART 1475—EMERGENCY FEED PROGRAM

Subpart—Livestock Feed Program

PRICING OF GRAINS

The regulations issued by the Commodity Credit Corporation published in 29 F.R. 13475, 30 F.R. 2854, 30 F.R. 6909, and 31 F.R. 13532, which contain specific requirements for the continuing Livestock Feed Program, are amended as follows.

In § 1475.208, subparagraph (1) of paragraph (c) is amended to read:

§ 1475.208 Pricing of grains.

* * * * *

(c) * * *

(1) The county base price shall be the total of the basic support rate for loans on and purchases of the feed grain by CCC for the county in which the grain is delivered as set forth in the applicable CCC Price Support Bulletin plus: 19 cents per bushel for corn and 34 cents per hundredweight for grain sorghums.

* * * * *

(Secs. 1-4 of 73 Stat. 574 as amended; secs. 407 and 421 of 63 Stat. 1055 as amended; secs. 4 and 5 of 62 Stat. 1070 as amended; 7 U.S.C. 1427; 15 U.S.C. 714 b and c)

Effective date: Upon filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on October 12, 1967.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 67-12331; Filed, Oct. 17, 1967; 8:49 a.m.]

Chapter XVIII—Farmers Home Administration, Department of Agriculture

SUBCHAPTER C—LOANS PRIMARILY FOR PRODUCTION PURPOSES

[FHA Instructions 441.1, 441.3, Administration Letters 549(441), 740(441)]

PART 1831—OPERATING LOANS

Policies and Authorities; Loan Processing

Subparts A and B, Part 1831, Title 7, Code of Federal Regulations (31 F.R. 14177, 14183) are revised to read as follows:

Subpart A—Policies and Authorities

Sec.
1831.1 General.
1831.2 Scope of farming operations to be financed with Operating loans.
1831.3 Eligibility requirements.
1831.4 Veterans' preference.
1831.5 Certification by County Committee.
1831.6 Cooperation between the Farmers Home Administration (FHA) and other lenders and creditors.
1831.7 Loan purposes.
1831.8 Special requirements and loan limitations.
1831.9 Rates and terms.
1831.10 Security policies.
1831.11 Land tenure.
1831.12 Loan approval.

Subpart B—Loan Processing

1831.31 General.
1831.32 Loan forms and routines.
1831.33 Review and approval or rejection.
1831.34 Loan closing.
1831.35 Revision in the use of operating loan funds.

Subpart A—Policies and Authorities

AUTHORITY: The provisions of this Subpart A issued under sec. 339, 75 Stat. 318; 7 U.S.C. 1989; Orders of Sec. of Agr., 29 F.R. 16210, 32 F.R. 6650.

§ 1831.1 General.

(a) This subpart prescribes the policies and authorizations for making operating loans to farmers (including ranchers) who will be conducting not larger than family farming operations.

(b) The basic objective of operating loans to farmers is to enable them to carry on a successful system of farming, to make efficient use of their land, labor, and other resources, to make needed improvements in their living conditions and economic situation, and to qualify for credit from private or cooperative sources within a reasonable time.

(c) Primary emphasis will be given to assisting family farm operators who will be making significant adjustments and improvements in their farm and home operations.

(d) The basic objective of operating loans will be accomplished through the extension of credit and supervisory assistance.

(e) Supervisory assistance will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Part 1802 of this chapter. Such assistance consists of farm and home planning, record keeping, analyzing the farm business, and giving management advice.

§ 1831.2 Scope of farming operations to be financed with operating loans.

Loans may be made to farmers who, after the loan is made, will be conducting not larger than a family farming operation. The term farming operation as used in this subpart includes an operation which consists, in whole or in part, of the production of fish under controlled conditions in lakes, ponds, and streams.

(a) *Adequate family farming operation.* An adequate family farming operation is defined as a farming operation (1) that is of sufficient size and productivity to furnish income that will enable a farm family to have a reasonable standard of living; pay operating expenses, including maintenance of necessary livestock, fish, farm and home equipment, land and buildings, and other farm structures; pay their debts; and have a reasonable reserve to meet unforeseen emergencies, (2) for which the management of the farm is furnished by the operator and his immediate family, and (3) for which the labor is furnished primarily by such operator and his immediate family except during seasonal peakload periods. It is not intended to include in this definition operations which require large amounts of seasonal hired labor.

(b) *Less than adequate family farming operation.* (1) A less than adequate family farming operation is one which is insufficient to meet the requirements of an adequate family farming operation as defined in paragraph (a) of this section. Such a farming operation must be one (i) which will produce sufficient agricultural commodities for sale that the farm to be operated will be recognized in the community as a farm rather than a rural residence, (ii) that will provide farm income from such sales which together with other dependable income will enable the family to have a reasonable standard of living, pay operating expenses, including maintenance of necessary livestock, fish, farm and home equipment, land, buildings and other structures, pay debts, and have a reasonable reserve for unforeseen emergencies, (iii) for which the management of the farm is furnished by the operator and his immediate family, and (iv) for which the labor is furnished primarily by such operator and his immediate family except during seasonal peakload periods. It is not intended to include in this definition operations which require large amounts of seasonal hired labor.

(2) Loans may also be made to farmers who can meet the requirements of paragraph (b) of this section except with respect to income, provided their incomes are sufficient to pay necessary farm operating and family living expenses not provided for in the loan, meet the required payments on the operating loan, and make the required payments on other indebtedness after any necessary debt adjustments, extensions, reamortizations, deferments, or nondisturbance agreements have been obtained in connection with such indebtedness. Applicants receiving loans under the authority contained in this subparagraph are confronted with problems such as advanced age, physical handicaps, limited education, or limited agricultural or other potential. Such problems make it difficult for these applicants to obtain off-farm employment or to acquire and develop additional farm resources. However, those who have a realistic potential for substantially increasing their incomes from farm or nonfarm sources will be encouraged and assisted in doing so.

(c) Loans may also be made to individuals conducting family farming operations as defined in paragraphs (a) and (b) of this section for recreational enterprises on their farms, when the enterprise will provide other sources of necessary income, and the operator and his immediate family will provide the management and primary source of labor.

§ 1831.3 Eligibility requirements.

To be eligible for an operating loan each applicant must:

(a) Be a citizen of the United States.

(b) Possess legal capacity to incur the obligations of the loan.

(c) Be an individual who has a farm background and either training or farm experience sufficient to assure reasonable prospects of success in the proposed farming operation. However, an applicant who is already earning sufficient income to have a reasonable standard of living would not be eligible for a loan, even though he meets other requirements as to farm background, experience, and training.

(d) Possess the character, ability, and industry necessary to carry out the proposed farming operation and honestly endeavor to carry out the undertakings and obligations required of him in connection with the loan.

(e) Be unable to obtain sufficient operating credit elsewhere to finance his actual needs at reasonable rates and terms taking into consideration prevailing private and cooperative rates and terms in the community in or near which he resides for loans for similar purposes and periods of time. The applicant's equity in real estate, chattels, and other assets should be considered in determining his ability to obtain credit from private and cooperative sources.

(f) After the loan is made, be conducting not larger than a family farming operation as an owner or tenant.

(g) Be able to meet his major needs for operating credit within the indebtedness limitation for operating loans during the period that such loans likely will be needed, except in cases where additional financing on a contractual or equally definite basis is available.

(h) When a loan for recreational purposes is being considered, possess the ability necessary to carry out the proposed enterprise.

§ 1831.4 Veterans' preference.

Veterans, as defined in Part 1801 of this chapter, will be given preference. When it appears that available funds will be inadequate to meet the needs of all applicants, the applications on hand from veterans will be processed first.

§ 1831.5 Certification by County Committee.

Before an operating loan is approved, the County Committee will certify on Form FHA 440-2, "County Committee Certification or Recommendation," that the applicant is eligible for a loan in accordance with the provisions of § 1831.3. In addition, the County Committee will establish the maximum amount of credit which may be extended, under the certification, to meet the actual needs of the applicant during his crop year. The crop year for each applicant will be established in accordance with the provisions of Part 1802 of this chapter. The maximum amount of credit established by the County Committee will not necessarily represent the amount which actually will be loaned.

§ 1831.6 Cooperation between the Farmers Home Administration (FHA) and other lenders and creditors.

(a) *General.* (1) County Supervisors will discuss FHA policies periodically with other agricultural lenders and creditors to keep them currently informed concerning the agency's policies with respect to loan making, cooperation with other lenders, supervision, servicing, and graduation of borrowers.

(2) Applicants and borrowers who apply for operating loans will, as heretofore, be encouraged to meet as much of their credit needs as feasible through other sources when such credit is available on terms which would meet the applicant's needs, and the income planned will be adequate to enable them to meet the required payments on such credit along with the payments on the FHA loan. This policy will enable the FHA to assist a larger number of applicants with the loan funds available.

(3) When operating credit is to be obtained from other sources by an applicant who is also receiving an operating loan, the amounts, purposes, and the plan of repayment for the year on all such credit will be shown in the Farm and Home Plan as provided in Part 1802 of this chapter. The County Supervisor should have reasonable assurance that the credit from the other sources will be available.

(b) *Participation under written agreements between FHA and commercial banks, cooperative lending agencies, or other legally organized agricultural lending agencies.* There are some situations in which commercial banks, cooperative lending agencies, or other legally organized agricultural lending agencies may be unable to extend to some of their farm customers the amounts of credit needed under the existing conditions. This may be due to certain banking or lending limitations, a lack of funds resulting from an adverse collection season, or other factors. In spite of these conditions such a lender may wish to continue a line of credit with a customer and likely will be willing to again provide his total credit needs after a reasonable period. In such cases if the applicant is otherwise eligible for an operating loan the FHA may participate with the other lender by providing part or all of the new credit the applicant needs for the crop year under the other provisions of this subpart and Subpart B of this part as modified and supplemented by the following:

(1) The FHA and other lender will execute Form FHA 441-3, "Participation Agreement."

(2) The other lender will close the loans to the applicant. An understanding will be reached between the FHA and the other lender concerning the supervisory and servicing actions to be carried out by each. This understanding will be shown on Form FHA 441-3.

(3) The applicant will be carrying on a sound farm and home operation after the loan is made and agrees to cooperate fully with both the FHA and the other lender.

(4) The loan to be made by the FHA must not result in the applicant's FHA indebtedness for operating loans exceeding 80 percent of his combined total operating loan and the operating-type indebtedness owed to the other lenders.

§ 1831.7 Loan purposes.

Subject to the loan limitations and special requirements set forth in § 1831.8, operating loans may be made for:

(a) Purchase of livestock, poultry, farm equipment, and paying costs incident to reorganizing the farming system for more profitable operation and for other farm needs, including equipment to be utilized in the development of forest lands, and the production and harvesting of forestry products such as pulpwood, mine-timber, railroad ties, or timber for other uses.

(b) Purchase of an undivided interest in livestock, poultry, farm equipment, or facilities to be operated under a joint arrangement or as a group service.

(c) Purchase of feed, seed, fertilizer, insecticides, and farm supplies; the repair of equipment; and other essential farm operating expenses, including cost incident to the production and harvesting of forestry products such as pulpwood, mine-timber, railroad ties, or timber for other uses; or paying bills incurred for any items in this paragraph for the crop year being financed.

(d) Payment of customary and equitable cash rent or cash charges for the use of farm buildings, pasture, crop, or hay land, and grazing permits if all of the following conditions exist:

(1) Arrangements cannot be made for such rent or charges to fall due at the time when income for such payments is expected to become available.

(2) The applicant is obligated under a written lease to pay such rent or charges in advance of the time when income is expected to become available to him for that purpose and the payment from loan funds is made in advance of such time.

(3) Not more than 1 year's cash rent or cash charges are paid with loan funds in any 1 lease year, except that if a loan is approved near the end of the current lease year funds for payment of such rent or charges for the succeeding lease year may be included in the loan.

(4) The terms of the lease provide the applicant with reasonably secure and satisfactory tenure.

(e) Payment of taxes due or about to become due, subject to the limitations in § 1831.8(c)(5), Social Security taxes in connection with hired labor, water or drainage charges or assessments, and premiums for insurance on real estate and personal property, including premiums on home owners policies. However, operating loans may be made to pay premiums on insurance covering real estate of a borrower indebted for both FHA real estate and operating loans, or of an FHA real estate loan borrower who is obtaining an operating loan for other purposes only if it is not planned that loans will be made year after year for payment of such premiums, and the operating loan is adequately secured. Funds may also be included for the payment of premiums for public liability and property damage insurance on farm equipment, including farm trucks, and on recreational equipment and enterprises.

(f) Payment of not more than a year's interest calculated at a rate not to exceed that which is reasonable and customary for the area, that is due on or about to become due on debts secured by liens of other creditors on livestock, farm equipment, and farm real estate.

(g) Payment of depreciation in any one year not to exceed 15 percent of the market value of the essential farm equipment or recreational equipment under prior lien to another creditor or 15 percent of the amout owed to such creditors, whichever is lesser.

(h) Acquisition of memberships in farm purchasing and marketing and farm service-type cooperative associations or to purchase stock in such associations to help provide capital for improvement of services to farmer members. Purchase membership or stock in a recreational-type cooperative association organized to utilize the applicant's resources and to produce additional income exclusive of membership in associations which will acquire, lease, or improve land not otherwise under the control of the members.

(i) Meeting family subsistence needs, including premiums on reasonable amounts of health and life insurance and expenses for medical care, or paying bills incurred for any items in this paragraph for the crop year being financed. Applicants must understand, however, that within the limits of their resources they should plan and carry on adequate food production and conservation programs.

(j) Purchase of essential home equipment and furnishings, and the payment for home equipment repairs required by the applicant family to sustain itself on

the farm in a reasonably satisfactory manner.

(k) Expenses incident to loan closing.

(l) Refinancing secured and unsecured debts, other than the payment of bills referred to in paragraphs (c) and (i) of this section, subject to the following:

(1) The amount advanced for such purposes does not exceed the applicant's equity in the livestock and farm and recreational equipment which is to be taken as security for the loan. When it is necessary to refinance a debt that was incurred for the production of feed on hand, or that is secured by a lien on such feed the applicant's equity in the feed also may be used, if necessary, to justify the refinancing of this particular debt. The funds advanced for this purpose will be scheduled for repayment in the same manner as funds advanced for the purchase of feed.

(2) The provisions of § 1831.8 (a), (b), and (c).

(3) The provisions of § 1831.32(e).

(m) Purchase of milk base either with or without cows where such action is necessary to assure the borrower a satisfactory market for his dairy products, as authorized or approved by the State Director.

(n) Purchase of grazing license or permit rights of private parties which can be validly sold and transferred or waived separate from any land lease or other interest in land either with or without eligible livestock, provided loans for this purpose are authorized or approved by the State Director.

(o) The purchase of equipment, animals and birds, or facilities, and for operating expenses relating to the acquisition, development, and operation of recreational enterprises such as boating, fishing, swimming, picnicking, horseback riding, hunting, ski jumps, tennis courts, vacation cottages, camp grounds, and nature trails not otherwise provided for in this subpart.

(p) Purchase of fish used to stock ponds, streams, or lakes under controlled conditions, and for operating expenses relating to such enterprises.

(q) The following real estate improvements, subject to the limitations in § 1831.8:

(1) Purchase, construction, alteration, repair, or relocation of essential farm service buildings or facilities, and minor repairs or alterations to farm dwellings.

(2) Purchase, repair, or relocate essential equipment which is or will become a part of the real estate and cannot be made subject to a security interest as a fixture in Uniform Commercial Code States, or be severed and made subject to a valid chattel mortgage in chattel mortgage States or to a security interest in California.

(3) Purchase, construction, alteration, repair, or relocate facilities or buildings to be utilized in a recreational enterprise.

(4) Land and water development, use, and conservation essential to the operation of the farm or recreational enterprise such as fencing, land clearing, establishment and development of forest lands, establishment and improvement of permanent hay or pasture, drainage and irrigation facilities, construction of small lakes or ponds, basic applications of lime and fertilizer, and the development of farmstead, livestock, and irrigation water supply and equipment therefor. Loan funds may be used to pay that part of the cost of facilities, improvements, and practices which is to be earned by participation in the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which funds were advanced likely will exceed $500, the applicant will assign the payment to the FHA.

(r) Additional purposes in Hawaii for family farming operations as follows:

(1) For purchasing necessary coffee-drying equipment and trellises for passion fruit under provisions of this paragraph provided such equipment does not become a part of the real estate. Consideration should be given to the acquisition of such equipment through the use of group services where possible.

(2) Subject to the limitations prescribed in § 1831.8(e) for erecting necessary farm buildings and making essential repairs and improvements to existing farm buildings provided the buildings, repairs, or improvements for which the loan is made are normally considered a part of the cost of operating the farm and will enable the applicant to establish or reorganize an approved farming enterprise.

(3) Subject to the limitations prescribed in § 1831.8(e) for establishing and improving pastures, hay crops, coffee, pineapple, banana, and similar perennial-type crops and for the construction of terraces, water ways, and farm ponds; clearing, leveling, and draining land; and paying for other Soil and Water Conservation and improvement mortgage.

(4) When loans are made to tenants for real estate improvements authorized in paragraph (q) (1) and (2) of this section and as supplemented by this paragraph, the lease must provide for an assingment of the lease to the Government or to someone designated by the Government.

(s) Financing feeder cattle enterprises to enable the borrower to provide a profitable means of using feed produced on the ranch or farm. Only feeder enterprises in which the borrower produces practically all the required hay and other roughage and a substantial part of the grain needed with be considered favorably for financing with operating loans. Only sound feeder operations which do not involve excessive risks to either the borrower or to the Government will be financed.

(1) Loans will not be made to finance commercial feed lot operations or where the applicant will require a substantial amount of credit for either the purchase of feed or for grazing fees.

(2) Ordinarily loans will be made only to finance feeder enterprises where lightweight feeders, such as feeder calves or yearlings are involved, and not to finance feeding operations involving heavy cattle, feeders which will be fed for only a short period, or feeders to be finished to prime grade.

§ 1831.8 Special requirements and loan limitations.

(a) *Obtaining credit from other sources.* (1) In determining the eligibility of an applicant if it appears that he may be able to obtain credit from other sources to meet his needs, the County Supervisor will require him to make a diligent effort to obtain credit from such sources.

(i) Applicants will be expected to apply for credit from lenders engaged in extending short-term or intermediate-term credit in the area, depending upon his needs.

(ii) Applicants should be advised to request lenders to indicate the amounts and terms of operating credit they might be willing to extend to the applicants.

(iii) When appropriate, the County Supervisor should check on evidence presented by an applicant that he cannot obtain credit elsewhere.

(iv) Letters from the lenders and any other evidence indicating that the applicant is unable to obtain credit elsewhere will be included in the loan docket.

(v) In no case will a loan be made to an applicant who is able to obtain the credit he needs elsewhere on terms he can reasonably be expected to pay.

(2) In any case in which a County Supervisor determines there is no possibility of the applicant's obtaining the necessary operating credit elsewhere and, therefore, does not require the applicant to provide evidence that he has made an effort to obtain such credit, the County Supervisor will record his conclusion and the basis for it in the loan docket.

(b) *Refinancing debts.* When an applicant's request includes the use of loan funds to refinance debts, it must be determined before a loan is made that his present creditors will not give him rates and terms on the existing debts that he reasonably could be expected to meet. Before refinancing any debt, the County Supervisor will:

(1) Discuss with the applicant the possibility of obtaining the needed credit from the applicant's present creditors or other sources. He will request the applicant to contact his present creditors to explain his credit needs and to determine if the creditor will renew, extend, change, or reduce the present debts, as appropriate. He will also advise the applicant of other credit sources available in the area which might assist him with his credit needs and request that he contact such credit sources. If the applicant is unsuccessful in his efforts to obtain credit or to get a revision of the rates and terms of his indebtedness, the County Supervisor will obtain from the applicant the reasons given by the present creditors and other sources for not assisting the applicant, and document such information in the running record.

(2) If the County Supervisor is notified by the applicant that his negotiations with the present creditors or other

sources were unsuccessful he will determine on the basis of the applicant's financial statement, planned income and expenses, estimated amount available for debt payment, and the additional facts presented by the applicant, whether it appears necessary to refinance the debts or any portion of the debts or to obtain a change in the rates and terms. When it is determined that refinancing may be necessary, he will contact in person, when practicable, each secured creditor and each unsecured creditor to whom substantial debts are owed for the purpose of verifying the necessity for refinancing. If the loan is to be processed, a statement of each secured account to be refinanced showing the final due date, interest rate, annual installment, amount delinquent, unpaid principal, and accrued interest will be obtained.

(c) *Purposes for which loans may not be made.* While it is impracticable to list all of the purposes for which loans may not be made, the following are those commonly requested by applicants which are not authorized:

(1) Purchase of passenger automobiles or the refinancing of debts for such purchases. However, this will not prohibit the refinancing of such a debt secured by a lien on livestock or farm equipment only, or on such property and on the automobile to the extent of the equity in the livestock and farm equipment serving as security for the debt.

(2) Payment of Federal or State income taxes, or Social Security taxes payable by borrowers in their own behalf.

(3) Purchase of real estate, or the making of payments on, or the refinancing of any indebtedness secured by a lien on real estate other than the payment of taxes and interest as authorized in this subpart. However, this will not prohibit the refinancing of a debt secured by a lien on livestock and farm equipment as well as on real estate to the extent of the equity in the livestock and farm equipment serving as security for the debt. In addition, loans may not be made for carrying on any land purchasing or land leasing program.

(4) Replacing livestock, farm equipment, or crops sold, or refinancing chattel debts incurred primarily for the purpose of obtaining funds for any of the real estate purposes referred to in subparagraph (3) of this paragraph, if such action was taken by the applicant with the intent of replacing the chattel property or refinancing the debts with Operating loan funds.

(5) Payment of taxes in connection with real estate securing FHA loans other than Operating loans.

(6) Payment of debts owed by the applicant to the FHA or to make principal or interest payments on such debts.

(7) Loan funds will not be used to purchase memberships or stock in production cooperatives, purchase memberships or stock for the purpose of establishing control by the FHA in any type of cooperative, or furnish a majority of the associations' capital requirements.

(8) To convert or develop his entire farming into a recreational enterprise.

(d) *Limitations on loans for less than adequate family farming operations.* Loans may not be made to establish individuals in farming operations of the scope referred to in § 1831.2(b)(1).

(e) *Limitations on loans for real estate improvements.* (1) Not more than $2,500 may be advanced to a borrower in any one fiscal year for real estate improvements or for refinancing unsecured debts clearly incurred for such purposes. Before an Operating loan is made for real estate improvements, a careful analysis must be made of the applicant's resources and proposed operations and all of the following determinations must be made:

(i) Operating loans will not be needed or made year after year to make substantial real estate improvements.

(ii) Such real estate improvements cannot be provided practicably through a real estate loan.

(iii) The sum of the operating loan being made for real estate improvements and the unpaid indebtedness against the farm and other security which secures the FHA real estate loan will not exceed the total indebtedness or the normal value limitations prescribed for real estate loans. The borrower's equity in the livestock and farm equipment to be taken as security for the operating loan may be added to the normal value of the farm where this is necessary to comply with the normal value limitations prescribed in Subpart A, Part 1821 of this chapter.

(iv) The applicant will likely continue to operate the farm for a sufficient period of time and under such terms that will enable him to obtain reasonable returns on his investment.

(2) Operating loans may not be made to a tenant to finance real estate improvements unless he has a written lease under equitable terms. In addition, the lease in such case must provide for compensating the tenant for any unexhausted value of the improvement upon termination of the lease.

(f) *Limitations on amount of loan.* The amount of each loan will be limited to the needs of the applicant and his ability to pay. In addition, consideration will be given to the value of the chattel property, including crops, which will be available as security. In no case may a loan be made which would result in the total principal balance outstanding to exceed $35,000 for operating loans (including production and subsistence). In addition, not more than 25 percent of the operating loan appropriation for any fiscal year may be used to increase the indebtedness of any borrower above $15,000.

(g) *Debt settlement cases.* A loan will not be made to an applicant whose debts have been settled pursuant to Part 1864 of this chapter or who has been released from personal liability under Subpart A, Part 1872 of this chapter, as reflected by the County Office records, or where settlement or release under such regulations is contemplated, unless the applicant's failure to pay his loan indebtedness was the result of circumstances beyond his control; the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been removed; and the borrower's operations will be sound and afford him a reasonable prospect of repaying the loan and meeting his other obligations. Prior to approval of the loan, the loan docket and any available case folders, including the County Supervisor's justification for making the loan, will be submitted to the State Office for a determination as to whether the loan should be made.

(h) *Loans to individuals for forestry purposes.* Applicants for Operating loans for forestry purposes are responsible for getting technical assistance from the Extension Service, U.S. Forest Service, Soil Conservation Service, State Forest Technicians, or other competent technicians in developing a forest plan on management and operation of his forest farm or farm woodlot. The plan will include projected yields, with operating expenses and estimated income, as well as a cruise of existing timber. The cruise report should include information such as an inventory of the kind and amount of timber on the land, the size and growth rate of the predominant type of trees, amount of merchantable timber on the farm, and the dates the timber should be marked for sale. Also, it should show the kind of forestry product sales such as pulpwood, mine-timber, railroad ties, or sale for other timber uses. No loan may be considered for a 3 percent interest rate unless an acceptable forestry plan of operation and management is provided and the loan approval official is reasonably assured that such a plan will be followed.

(i) *Loans to individuals jointly engaged in farming.* (1) A joint loan may be made to two eligible applicants living together or living separately and operating jointly not larger than one family-farm unit. When joint loans are made, both individuals will execute the application, payment authorization, notes, mortgages, and other documents required in connection with the making and closing of the loan.

(2) Separate loans may be made to eligible applicants who are engaged jointly in farming, provided not more than two individuals are interested in the operations, and the operations provide the equivalent of not larger than a family farming operation for each individual. If a loan is made to only one such individual, it will be secured by a lien on his interest in the crops and chattel property as required by § 1831.10. If a loan is made to each of the two individuals, a separate security instrument may be executed by each borrower on his interest in the property to secure his loan or a joint security instrument may be executed by both borrowers to secure both loans.

(j) *Relationship with emergency loans.* Operating loans will not be made to applicants whose credit needs can be met adequately with emergency loans as prescribed in Part 1832 of this chapter.

(k) *Loans for recreational enterprises.* The farm and home plan will have sufficient information attached to determine the feasibility and soundness of the applicant's request for FHA assistance in conducting a recreational enterprise in conjunction with his farming operation. Such information will indicate whether the enterprise provides sufficient income to meet its operating expenses, depreciation, proportionate share of the debt, and make a reasonable contribution to the family's income.

§ 1831.9 Rates and terms.

Interest will be charged at the rate of 5 percent per annum on all operating loans, except that loans made for the purchase of equipment to be used primarily in connection with a forestry enterprise and loans for operating expenses directly relating to a forestry enterprise will bear interest at the rate of 3 percent per annum. Interest will accrue from the date of the loan check on outstanding principal only and will not be compounded. Loans will be scheduled for payment as follows:

(a) Payments of principal on operating loans will be scheduled on the note in accordance with the borrower's reasonable ability to pay, determined by an analysis of his farm and home operations as reflected in his farm and home plans. Principal payments on such loans will be scheduled at least annually, unless it is determined that income sufficient to meet the initial payment will not be received within 12 months from the date of the loan check, in which case the initial payment may be scheduled on a date coinciding with the date the income is to be received, but not beyond the end of the second full crop year following the date of the loan. At least one payment will be scheduled during each 12-month period thereafter. In no event will any payment be scheduled later than 7 years from the date of the loan check.

(1) Advances for annual recurring operating expenses or for paying bills incurred for such purposes for the crop year being financed will be scheduled for payment when the principal income from the year's operations normally would be received. This includes advances for the payment of interest, taxes, and depreciation.

(2) Advances to purchase or produce feed for productive livestock, or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, will be scheduled for payment when the principal income from the sale of such livestock or livestock products can be expected.

(3) Advances for the purchase of equipment or the refinancing of debts on equipment will ordinarily be scheduled for payment over a period not to exceed 5 years. In determining the payment period for advances made for such purposes, the loan approval official will give careful consideration to the useful life of the property and the fact that repayment on such advances must more than offset depreciation, including obsolescence, of the equipment if the borrower is to make financial progress.

(4) Advances for purposes other than those enumerated in subparagraphs (1), (2), and (3) of this paragraph will be scheduled for payment over the minimum period consistent with the applicant's ability to pay, as determined from an analysis of the farm and home operations. In no instance may the payment schedule extend beyond the useful life of the security offered for the advance.

(5) When conditions warrant such action, principal payments scheduled in accordance with subparagraphs (3) and (4) of this paragraph may vary in amount. For example, when a livestock enterprise is being expanded as the feed and pasture program is developed, a graduated payment schedule could be used if necessary. In connection with subsequent loans for such purposes, it is necessary to consider payment schedules established previously for outstanding loans in order to assure a realistic overall payment schedule within the prescribed limits. In such cases loans will be scheduled for repayment from anticipated income within a 7-year period. The last installment will not be larger than the amount which can then be refinanced with another lender or be repaid within a renewal period of not to exceed 5 years.

§ 1831.10 Security policies.

The words "security instrument" as used in this subpart include chattel mortgage States and financing statement and similar lien instrument in chattel mortgage States and financing statement and security agreement in Uniform Commercial Code States.

(a) Except as provided in subparagraphs (3) of this paragraph and paragraphs (b), (c), (d), and (f) of this section, each loan will be secured as follows:

(1) *Crops, title to which is held by the borrower.* By a first lien on the applicant's crops, or his share of the crops if he is a share tenant, which are growing or to be grown by him, subject only to:

(i) The landlord's lien on the crops for reasonable cash or privilege rent for the current year.

(ii) The real estate mortgagee's lien or real estate purchase contract holder's lien on the crops for the current year's installment on the real estate debt, provided such installment is reasonable when related to the normal rental charges for similar farms in the area.

(iii) The lien of another creditor on particular crops for advances made or to be made by him to produce such crops provided no advance will be made by the FHA in connection with such crops.

(iv) The contract of another creditor or the lien in connection with such contract on particular crops for advances made or to be made by him to produce, harvest, process, or market such crops, provided the crops are under written contract with the creditor, and the contract limits advances to production, harvesting, processing, or marketing costs in connection with the contract crop or to purposes related thereto.

(2) *Crops grown under contract when title to the crop is held by the contractor.* When a crop is being produced, harvested, processed, or marketed by the applicant under an equitable written contract with a responsible contractor and title to the crop is retained by such contractor, loans may be made in connection with such crops, provided the contractor limits his advances to production, harvesting, processing, or marketing costs in connection with the contract crop or to purposes related thereto, and provided also that an assignment of all or a part of an applicant's share of the income from the crop is given to the FHA and is accepted in writing by the contractor holding title to the crops. The assignment will be in an amount at least equal to the amount planned to be paid on the applicant's FHA indebtedness from such crop. However, when no payment is expected to be made on the loan from the crops, an assignment will not be required. The form for use in obtaining such assignments will be approved by FHA. In Uniform Commercial Code States the assignment will constitute a security agreement on such crop income, and the contract will be described specifically or as "Contract Rights" or "Contract Rights in Crops," and so forth, in paragraph 1 (b) of the financing statement.

(3) *Feed crops only.* Subject to the limitations of subparagraph (6) of this paragraph, a lien on crops need not be taken when the crops to be produced by the borrower are for feed purposes only and the loan approval official determines that the loan is otherwise reasonably well secured and that liquidation action, either voluntary or involuntary, is not likely to occur during the crop year for which the loan is made.

(4) *Livestock, poultry, farm equipment, and facilities purchased or refinanced.* (This includes animals, fish, birds, and recreational equipment and facilities.) By a first lien on all such items, except that liens will not be taken on equipment, facilities, or buildings which cannot be made subject to a valid chattel lien, or in Uniform Commercial Code States, a valid security interest; or on poultry kept primarily for subsistence purposes; on household goods and equipment; or on small tools and equipment. An applicant obtaining a loan for the purchase of an undivided interest in the property referred to in this subparagraph or the refinancing of debts on an undivided interest in such items will secure his loan by a lien on his undivided interest in the item purchased or refinanced along with any other security required by this section. Joint security instruments will not be taken except as provided in § 1831.8(i). Each party having an undivided interest in such property will execute Form FHA 441-12, "Agreement for Disposition of Jointly Owned Property," providing for the disposition of his interest in the property. However, Form FHA 441-12 will not be required when a tenant and landlord own property jointly and the lease provides for satisfactory division of such property or the proceeds from its sale, or a joint security instrument is taken to secure loans to two individuals jointly engaged in farming.

(5) *Other livestock, poultry, farm equipment, and facilities of security value.* (This includes animals, fish, birds, and recreational equipment and facilities.) By the best lien obtainable on as much of such property of significant security value owned by the applicant at the time the loan is approved as is necessary to protect the interest of the Government. This will include any undivided interest in such property owned by the applicant jointly with others who have an interest in the operation. A lien will not be taken under this subparagraph on the types of items excluded under subparagraph (4) of this paragraph.

(6) *Liens and assignments to protect the Government's interest in feed purchased or produced with loan funds.* Loans made to purchase or produce feed for livestock being fed for market or to be fed to productive livestock (excluding livestock and poultry kept primarily for subsistence purposes) will ordinarily be secured by first liens on such livestock. However, when a first lien cannot be obtained, the loan will be secured by liens or assignments as provided below:

(i) When the livestock will be owned by the applicant and a first lien cannot be obtained, a junior lien will be taken, provided it is determined that the applicant has, or will acquire during the feeding period, an equity in the livestock being fed or will receive income from livestock or livestock products, either of which must be commensurate with the investment made for this purpose; and provided prior lienholders sign Form FHA 441-13, "Division of Income and Nondisturbance Agreement," or similar form approved by FHA, agreeing to a suitable nondisturbance period and to a division of the income to be received from the livestock and livestock products, which will permit the applicant to pay his loan in accordance with the policies expressed herein. However, when no payment is expected to be made on the loan from the livestock or livestock products, Form FHA 441-13 will not be required.

(ii) When the livestock enterprise is to be managed by the applicant under a livestock share lease, share agreement, or contract, and the income to be received therefrom will be from the livestock fed, or from livestock products, an assignment of all or a part of such income will be taken, provided the owner or purchaser of the livestock or livestock products accepts in writing the assignment. The assignment will be in an amount at least equal to the amount planned to be paid on the applicant's FHA indebtedness from such income. The form for use in obtaining such assignments will be approved by FHA. However, when no payment is expected to be made on the loan from the livestock or livestock products, an assignment will not be required. In Uniform Commercial Code States, if an assignment on the livestock income is taken, such assignment will constitute a security agreement on such income and the share lease, share agreement or contract will be described specifically or as "Contract Rights" or as "Contract Rights in Livestock," and so forth, in paragraph 1(b) of the Financing Statement. When the borrower's compensation under the livestock share lease, share agreement, or contract is livestock increase, the applicant will be required to agree in writing at the time the loan is made to give a first lien on such increase as soon as an effective lien can be taken, unless an after-acquired property clause in an existing lien instrument will provide such a first lien.

(7) *Assignments of crop insurance.* Assignments of all or a part of crop insurance proceeds will be taken when the loan approval official determines such action is necessary to protect the interests of the Government.

(i) In order to obtain a claim on Federal crop insurance proceeds, it will be necessary to obtain an assignment on such proceeds. The assignment will be prepared on Form FCI-20, "Collateral Assignment," furnished by the local representative of the Federal Crop Insurance program. The assignment must be approved by the Federal Crop Insurance Corporation.

(ii) An assignment of other crop insurance is not required in cases where a crop insurance policy contains a standard mortgage clause naming the FHA as mortgagee or secured party.

(8) *Assignments of or consent to payment of proceeds from sale of agricultural products.*—(i) *Uniform Commercial Code States.* Since the security agreement in Uniform Commercial Code States will cover agricultural products such as milk, eggs, and wool, Form FHA 441-18, "Consent to Payment of Proceeds From Sale of Farm Products," will be used rather than an assignment of income. However, assignments of incentive and agricultural program payments will be taken in Uniform Commercial Code States the same as in chattel mortgage States.

(ii) *Chattel mortgage States.* When loans are made in chattel mortgage States to finance dairy or commercial egg enterprises from which payments are expected, assignments on Form FHA 441-8, "Assignment of Proceeds From the Sale of Agricultural Products," will be taken on the milk or egg income to assist in obtaining regular payments as income is received whenever it is possible to obtain an agreement from the purchaser to honor the assignments. The asignment will be in an amount sufficient to meet repayments planned from this source. Assignments of proceeds from the sale of other agricultural products or agricultural income, including wool incentive and agricultural program payments, will be taken when necessary to protect the interest of the Government and can be obtained.

(9) *Real estate.* Real estate security will not be taken in connection with making initial operating loans, except that in Uniform Commercial Code States a security interest may be taken in fixtures even though they are considered to be real estate in the particular State. Furthermore, such real estate security will not be taken in connection with making subsequent operating loans except in individual cases in which it appears that it may be necessary to rely on such security for payment of the loan. When such security is taken the provisions of § 1871.2 of this chapter will apply. Generally, an item is to be considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or damaging the land, or defacing or dismantling the structure, or damaging substantially the item itself.

(10) *Consent and subordination agreements and severance agreements.* (i) In these Uniform Commercial Code States in which the use of a Severance Agreement is not prescribed by the State Director, Form FHA 440-26, "Consent and Subordination Agreement," will be used as necessary to meet the security requirements contained in subparagraph (4) of this paragraph.

(ii) In chattel mortgage States, and in those Uniform Commercial Code States in which the State Director so prescribes, Form FHA 440-6, "Severance Agreement," will be obtained when operating loan funds are used to purchase or refinance debts on property which is or may become a fixture, and it is necessary to sever such property from real estate to meet the security requirements contained in subparagraph (4) of this paragraph.

(b) Loans made for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided it would have security value. Such security interest also may be taken on significant amounts of dividends to be received from stock, memberships, or patronage, or on undivided profits and other retains. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner approved by FHA.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the interest of the Government due to such reasons as the amount of the advance or the borrower's financial situation.

(c) Loans made under participation agreements between the FHA and other lenders under Form FHA 441-3, as prescribed in § 1831.6, will be secured by liens taken by the other lenders. Such liens will be taken on livestock or farm equipment or crops and may also include any other chattel property which the other lender determines is desirable. In such cases the loan approval official must determine that the security to be obtained by the other lender in accordance with the provisions of the participation agreement will be adequate to protect the interests of the Government under that agreement.

(d) Loans of not more than $1,500 for real estate improvements may be made

on the basis of the borrower's promissory note without taking other security when the applicant has a good reputation for paying his debts promptly, when he clearly has sufficient income to meet all of his obligations, and when he has assets from which a recovery of the loan could be made in case of default.

(e) Property and public liability and property damage insurance will be obtained as follows:

(1) Applicants obtaining Operating loans should be encouraged to carry insurance on their livestock, equipment, crops, feed, seed, and other property necessary to afford them adequate protection against substantial losses from the common hazards existing in an area. It is especially desirable that insurance be obtained by applicants who obtain large loans and have considerable livestock, equipment, feed, and seed which are housed over on extended period. When such insurance is required by the State Director or loan approval official, it may be obtained from any insurance company properly authorized to do business in the area.

(2) Applicants receiving loans for a recreational enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance.

(3) When insurance is required on property serving as security for an Operating loan, a Form FHA 426-2, "Property Insurance Mortgage Clause (Without Contribution)," or a standard mortgage clause which is in general use in the area will be attached to or printed in the policy and will show the United States of America (Farmers Home Administration) as mortgagee or secured party.

(f) State Directors will inform County Supervisors on a State basis if it is necessary, because of State statutes or types of leases, land purchase contracts, and real estate mortgages commonly in use, to obtain subordination agreements, Form FHA 441-17, "Certification of Obligation to Landlord," severance agreements, disclaimers, and consent and subordination agreements.

(g) Lien searches will be obtained in accordance with the provisions of Subpart B of this part to determine that the FHA will have the required security except that when the loan is made under a written participation agreement with another lender a lien search will not be required by the FHA if the loan approval official determines that the other lender will take the necessary steps in closing the loan to assure proper protection of the Government's interests.

§ 1831.11 Land tenure.

Good land tenure is essential in building a sound and successful farming business. Applicants will, therefore, be required to make satisfactory arrangements for the use of sufficient land of the quality necessary for carrying on an approved system of farming on a sound and practical basis. The following tenure policies will be followed by FHA officials in the making and approving of loans.

(a) *Tenant operators.* (1) Before a loan is made the tenant, the landlord, and the County Supervisor must understand the terms and conditions of the tenure arrangements. These understandings can best be reached through discussions, preferably on the farm, and such discussions will be held whenever possible except when no significant adjustments and improvements are to be made in the farming operations. In any event, the understanding will include the manner in which the farm will be operated, the manner in which the planned adjustments and improvements will be financed, the distribution to be made of income and expenses and other contributions by the tenant or the landlord, the provisions for the division of the jointly owned property when the lease is terminated, an agreement on any pertinent long-time aspects of the case, if applicable, and any other factors affecting the tenure relationship.

(2) Ordinarily, loans will not be made unless the applicant obtains a satisfactory written lease. However, when for good reason an applicant cannot obtain a written lease on part or all of the land he expects to operate the loan may be approved, provided the County Supervisor determines that the understanding existing between the tenant and landlord are definite and the rental terms are satisfactory and that the lack of a written lease will not likely jeopardize the applicant's farming operations, and provided also that the loan docket clearly reflects the rental arrangements made with respect to each tract of land.

(3) Pertinent information concerning the tenure arrangements will be recorded as set forth in Subpart B of this part.

(b) *Owner operators.* Before loans are made to owner operators, the terms existing with respect to any real estate indebtedness owing will be ascertained and a determination will be made as to whether the applicant's proposed farming operations will enable him to meet the required payments on the real estate indebtedness as well as being sound in other respects, and the applicant will have reasonably secure tenure on the farm under the terms of the real estate mortgage or purchase contract.

§ 1831.12 Loan approval.

(a) *Approval authority.* (1) Operating loans may be approved by the following officials in accordance with the provisions of this subpart, provided the outstanding principal indebtedness of operating loans or combination of operating and emergency loans will not exceed the amounts indicated:

State Director	$35,000
District Supervisor GS-12	25,000
District Supervisor GS-11	20,000
County Supervisor GS-11	20,000
County Supervisor and Assistant Supervisor GS-9	15,000
County Supervisor and Assistant Supervisor GS-7	10,000

(2) Any combination of operating and emergency loans which will result in an outstanding principal indebtedness in excess of $35,000 must have prior review and authorization by the Administrator before approval by the State Director.

(b) *Administrative determinations and responsibilities.* When the County Committee certification has been made, the loan approval official will determine administratively whether:

(1) The applicant is eligible and likely to be successful in the proposed operations and to achieve the objectives of the loan.

(2) The applicant has available, under satisfactory tenure arrangements, a farm adequate in size and productivity to reasonably expect success, taking into consideration off-farm income and income from a recreational enterprise.

(3) Plans have been made and documented for the proper system of farming and for any crucial adjustments, improvements, and practices essential for the applicant's success and whether provision has been made for proper followup supervision and corrective action.

(4) The proposed farm and home operations and recreational enterprise of the applicant are sound.

(5) The loan is sound and can be repaid from income as scheduled.

(6) The amount of the loan and the purposes for which the funds are to be used are consistent with the applicant's needs and are for authorized purposes.

(7) The security requirements can be met.

(8) The certifications required of the applicant and County Committee have been made and are a part of the loan docket.

(9) The loan meets all other FHA requirements.

Subpart B—Loan Processing

AUTHORITY: The provisions of this Subpart B issued under sec. 339, 75 Stat. 318; 7 U.S.C. 1989; Orders of Sec. of Agr., 29 F.R. 16210, 32 F.R. 6650.

§ 1831.31 General.

This subpart sets forth the requirements and procedures for the preparation and execution of documents and for other routines in connection with making operating loans as prescribed in Subpart A of this part.

§ 1831.32 Loan forms and routines.

(a) *Applications for Farmers Home Administration (FHA) assistance.* Applications for FHA assistance will be taken as outlined in Part 1801 of this chapter.

(b) *Form FHA 440-2, "County Committee Certification or Recommendation."* (1) When the applicant is determined to be eligible, the County Committee will execute Form FHA 440-2 before the loan is approved. This certification will cover any operating loans to be made to the applicant for the crop year specified within the maximum amount of credit established by the County Committee. The date designated by the County Committee as the end of the crop year and the maximum amount of credit will be inserted in the appropriate spaces.

(i) It is intended that County Committees will have some latitude in determining for which crop years credit may

be extended. In some cases where an initial operating loan is being made, the County Committee may indicate that the crop year for which credit may be extended coincides with that for which an interim plan is developed. Such action may be taken because the Committee wishes to review the circumstances of the applicant again at the end of the interim crop year before committing itself for the succeeding crop year. In other cases, the County Committee may, when an application is being acted upon during the latter part of a crop year, establish the maximum amount of credit for both the interim crop year and the next crop year, provided the operations for the current year have advanced to the point that the County Committee will be able to determine with reasonable certainty the maximum amount of credit which the applicant would need for the next crop year under normal conditions. The same principles with respect to County Committe certifications for an initial loan may be followed in connection with subsequent loans.

(ii) If it is found, after an applicant has been certified as eligible, that a different farm will be operated or that an amount of credit in excess of the maximum previously established by the County Committee will be required for the designated crop year, it will be necessary for the County Committee again to certify the applicant as eligible on the basis of the changed circumstances if a loan is to be made.

(2) When the County Committee has agreed to increase the original amount of loan assistance certified for the crop year because such amount was insufficient to meet the needs of the borrower, a new Form FHA 440-2 will be prepared and executed. The date of the end of the same crop year (month, day, and year) as that indicated in the original certification will be inserted in the appropriate space. In the space indicating the maximum amount of credit for the crop year, the amount to be inserted will be the sum of the latest certification for the crop year for any operating, emergency, and special livestock loan plus the additional amounts of any such loans the County Committee determines is necessary to meet the actual credit needs of the borrower for the remainder of the crop year. A notation will be made in the blank space on Form FHA 440-2 that the County Committee has again reviewed the applicant's situation and his credit needs for the crop year are as indicated rather than $_____ shown on Form FHA 440-2 dated _____. The new Form FHA 440-2 should be executed by the County Committee and dated as of that date. The Form FHA 440-2 previously executed will be retained in the case files.

(c) *Form FHA 431-1, "Long-Time Farm and Home Plan."* Form FHA 431-1 will be developed with those applicants who are to receive intensive supervision as prescribed in Part 1802 of this chapter.

(d) *Form FHA 431-2, "Farm and Home Plan."* Form FHA 431-2 will be developed with all applicants as prescribed in Part 1802 of this chapter except when a loan is made only for the acquisition of membership or the purchase of stock in a cooperative association and the appplicant is not indebted for another FHA loan. In the latter case, the best estimates available will be used to complete Table J of Form FHA 431-2 in order to determine whether the loan requested can be paid and the period over which payments should be scheduled. The source of payment should be shown in Table K. When the preparation of Table J is inadequate to enable the loan approval official to make the required determinations, other portions of Form FHA 431-2 as necessary will be used.

(1) When a loan is being made for a recreational enterprise, a statement of income and expenses will be attached to the farm and home plan as prescribed in § 1831.8(k).

(e) *Appraisal of chattel property.* (1) When a debt is to be refinanced under the provisions of § 1831.7(l), Form FHA 440-21, "Appraisal of Chattel Property," or other form approved by the State Director will be completed.

(2) Ordinarily, only one appraisal form will be required with a loan docket.

(3) When funds are to be advanced for the payment of depreciation pursuant to § 1831.7(g), an appraisal will be made with respect to the farm equipment or recreational equipment involved for the purpose of making the required determination.

(f) *Form FHA 440-32, "Request for Statement of Debts and Collateral."* This form will be used to obtain information from the creditors of the applicant concerning the amount of debts owed and the collateral for the debts in Uniform Commercial Code States, particularly in those cases in which a statement is required of the debts to be refinanced as provided in § 1831.8(b).

(g) *Tenure agreement.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. Where it is not practical to obtain a copy of the lease agreement, a statement setting forth those terms and conditions of the agreement which are not clearly reflected in the Farm and Home Plan will be prepared and made a part of the loan docket. A brief summary of the joint discussion between the tenant, landlord, and County Supervisor will be reflected in the borrower's case folder. If such a discussion is not held, a statement of the reasons therefor should be included in the borrower's case folder.

(h) *Form FHA 441-1, "Promissory Note."* The amount of each loan and the scheduled payments thereon will be in multiples of $10. Not more than four payments on a single note will be scheduled for any year. The time limitations for payment schedules prescribed in § 1831.9 from the date of the loan check instead of from the date of the note. Form FHA 441-1 will be dated as of the date of execution by the applicant. The applicant's spouse will be required to execute Form FHA 441-1 when legally required by State law, or the loan approval official determines that the signature is needed because of the spouse's interest in the farm being operated or in property offered as security, or it is determined by the State Director, on a State basis, that the spouse's signature will be required.

(1) When an operating loan is made for purposes which would be secured in accordance with the provisions of § 1831.10(a) and also for purposes in which the security provisions of § 1831.10 (b)(1) or (d) apply, separate notes will be required.

(2) When an operating loan is being made simultaneously for forestry purposes at the rate of 3 percent interest as prescribed in § 1831.9 and for other operating purposes, separate notes will be prepared.

(i) *Form FHA 441-3, "Participation Agreement."* This form will be used when the FHA is participating in a loan under the provisions of § 1831.6. Form FHA 441-3 will be executed by the applicant and the other lender before it is executed by the loan approval official on behalf of the Government.

(j) *Form FHA 441-16, "Repayment Schedule for Participation Loans."* This form will be used when the FHA is participating in a loan under the provisions of § 1831.6. Form FHA 441-16 will show the same repayment schedule as is shown on the note taken by the lender to evidence each FHA advance. The borrower's address will be inserted on the lower right corner of this form.

(k) *Form FHA 441-4, "Participation Notice."* This form will be used by the lender when the FHA is participating in a loan under the provisions of § 1831.6 to notify the County Supervisor of the actions taken in closing the loan.

(l) *Form FHA 440-9, "Supplementary Payment Agreement."* This form will be used, as needed, with applicants and borrowers who will be receiving regular off-farm income and income from a recreational enterprise from which payments are to be made on the loan.

(m) *Form FHA 440-1, "Payment Authorization."* Form FHA 440-1 will be prepared for the total amount of the loan as indicated on Form FHA 441-1. Separate Forms FHA 440-1 will be prepared for each loan. However, when separate notes are prepared in accordance with paragraph (h) of this section, Form FHA 440-1 will be prepared for the total amount of the notes. The approval official will indicate his determination that the applicant is eligible and his approval of the loan by signing and dating the original in the space provided, and by inserting his title.

(n) *Immediate and future disbursements.* All of the applicant's anticipated credit needs for the crop year will be planned for when Form FHA 431-2 is developed and all of the documents for loan advances required for the crop year may be submitted to the Finance Office at one time. Such documents may provide for the loan funds to be disbursed in (1) an immediate loan advance, (2) an immediate loan advance and one or more future loan advances or, (3) one or more future loan advances without an immediate advance, provided, however,

all such loans must be disbursed at least 30 days apart. If more than one loan advance is submitted to the Finance Office at the same time all such advances will be shown as the same type; that is, either initial or subsequent. Subsequent loans also may be submitted at any time during the crop year to meet credit needs of the applicant which could not be anticipated at the beginning of the crop year, provided the need for such credit is reflected on a revision of Form FHA 431-2. When credit is to be extended in more than one loan advance, a separate payment authorization and note must be submitted for each advance.

(o) *Security instruments.* The requirements with respect to the signature of the applicant's spouse will be the same as prescribed for Form FHA 441-1 in paragraph (h) of this section.

(1) *Chattel mortgage States.* Form FHA 440-4 (State), "Crop and Chattel Mortgage," or similar instruments approved by FHA will be used.

(2) *Uniform Commercial Code States.* Form FHA 440-25, "Financing Statement," and Form FHA 440-4 (State), "Security Agreement," will be used unless provision is made by the State Director for the use of other forms. (See also § 1831.10(a)(2).) The financing statement and security agreement together will constitute a security instrument. Although only the financing statement is required to be filed or recorded, it is necessary also to take a security agreement in order to have a complete security instrument.

(p) *Form FHA 441-5, "Subordination Agreement," or Form FHA 441-17, "Certification of Obligation to Landlord."* When a subordination agreement is required on crops, livestock, farm equipment, and other chattel property, including items which have become personal property through execution of a severance agreement, Form FHA 441-5 or other form approved by the State Director where Form FHA 441-5 is not legally sufficient, will be used except as provided in subparagraph (1) of this paragraph. The years to be covered by the subordination generally will be for the period of the loan or the unexpired period of the lease if the borrower is a tenant, but as a minimum will be for the year for which the loan is made.

(1) Form FHA 441-17 may be used in lieu of obtaining a subordination agreement when it appears that the applicant is not obligated to the landlord except for rent for the lease year and that he will not incur other obligations to the landlord during such year, and authorization for the use of Form FHA 441-17 in such cases has been issued by the State Director with prior approval of the National Office. See § 1831.10.

(q) *Assignment of or consent to payment of proceeds from the sale of farm products*—(1) *Chattel mortgage States.* Form FHA 441-8, "Assignment of Proceeds From the Sale of Agricultural Products," or other form approved by the State Director will be used to obtain an assignment of proceeds from the sale of farm, dairy, poultry, or other agricultural products.

(2) *Uniform Commercial Code states.* Form FHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products," will be used in cases in which products such as milk, eggs, and wool are taken as security.

(3) *Form FHA 441-21, "Transmittal of Assignment or consent."* This form may be used to transmit Form FHA 441-8 or Form FHA 441-18 to purchasers.

(r) *Form FHA 440-6, "Severance Agreement."* This form will be used in chattel mortgage states and in those Uniform Commercial Code states in which its use is prescribed by the State Director.

(1) If severance agreements are required, such agreements will be executed no later than the date on which the property purchased with loan funds is delivered to the farm, or prior to the release of loan funds to the creditor if refinancing of debts on such property is involved.

(2) Form FHA 440-6 will be executed by the parties indicated (including the FHA if a real estate lienholder) in the following situations:

(i) When the borrower owns the land free of any liens other than liens for real or personal property taxes, he will execute the form.

(ii) When the borrower owns the land subject to a lien(s), he and all lienholder(s) except those holding liens for real or personal property taxes will execute the form.

(iii) When the borrower is purchasing the land under a title retaining contract, he, the owner, and all lienholders except those holding liens for real or personal property taxes will execute the form.

(iv) When the borrower is leasing the land, he and the owner only will execute the form.

(3) State Directors will specify (i) the situations in which severance agreements are required under State law to comply with the requirements of Subpart A of this part; (ii) whether the severance agreement should be filed or recorded; and (iii) whether the spouse of the borrower and the spouses of other parties of interest also will be required to execute the severance agreement. In specifying the situations in which severance agreements will be required, consideration will be given to the actions necessary to prevent the property from becoming part of the real estate as well as to severance after it has become attached to the real estate.

(s) *Form FHA 440-26, "Consent and Subordination Agreement."* Unless otherwise prescribed by the State Director, this form rather than a severance agreement, will be used in Uniform Commercial Code States when a security interest is taken in property after it has become a fixture.

(1) Consent and subordination agreements will be obtained when necessary to meet the security requirements contained in Subpart A of this part, as follows:

(i) Prior to the release of loan funds to the creditor, if a debt is being refinanced on an item which already has become a fixture.

(ii) Not later than the time of loan closing, in all other cases in which a security interest is being taken on an item which already has become a fixture.

(2) Consent and subordination agreements will be taken only in those cases in which the fixture is placed on the real estate before all of the following steps have been taken: (i) The financing statement and security agreement covering the fixture have been executed; (ii) the financing statement is filed; and (iii) the payment authorization is signed by the loan approving official.

(3) Consent and subordination agreements will be executed by the same parties who are required to sign severance agreements under paragraph (r)(2) of this section, except that they will not be executed by the borrower. Consent and subordination agreements need not be filed or recorded unless required in individual states.

(t) *Form FHA 441-13, "Division of Income and Nondisturbance Agreement."* Form FHA 441-13 will be used when it is necessary to obtain both a division of income and a nondisturbance agreement from prior lienholders.

(u) *Form FHA 441-10, "Nondisturbance Agreement."* Form FHA 441-10 will be used when it is necessary to obtain only nondisturbance agreements from creditors of an applicant who are in a position to interfere with the applicant's farming operations.

§ 1831.33 Review and approval or rejection.

After the documents prescribed in § 1831.32 have been assembled, the loan approval official will make the determinations required in § 1831.12(b).

(a) *Approval of loans.* If the loan is to be approved, the loan approval official will date and sign Form FHA 440-1 and insert his title in the spaces designated for these purposes. The loan approval official also will set forth any special conditions of approval or special security requirements in the borrower's case folder.

(1) If a "participation loan" under the provisions of § 1831.6 of this part is involved, the loan approval official also will execute Form FHA 441-3 on behalf of the Government.

(b) *Rejection of loans.* If a loan is rejected, the loan approval official will indicate the reasons for the rejection in the borrower's case folder. The County Supervisor will notify the applicant of the rejection and will return to him the original of Form FHA 441-1, any tenure agreements, and any executed security instruments (including the unfiled financing statement in Uniform Commercial Code States).

§ 1831.34 Loan closing.

(a) *Check delivery.* County Office employees in bonded positions will receive and deliver loan checks. Upon receipt of a loan check, the County Supervisor will notify the applicant promptly on Form FHA 440-8, "Notice of Check Delivery,"

or mail the check to him, or, if a "participation loan" is involved, deliver the loan check to the other lender and notify the applicant of such delivery, or, when a supervised bank account is required and the depository bank does not require the applicant's endorsement for deposit, he may deposit the loan check in the supervised bank account and furnish the applicant a copy of the deposit slip. If the bank will not accept the loan check for deposit in a supervised bank account without the applicant's endorsement, the County Supervisor will retain the check and arrange with the applicant for a time and place for its deposit. If a "participation loan" is made the other lender will close the loan, and take security instruments (including financing statements in Uniform Commercial Code States) in accordance with the provisions of the "Participation Agreement."

(b) *Form FHA 440-13, "Report of Lien Search."* Form FHA 440-13 or other form providing substantially the same information will be prepared.

(1) Lien searches will be obtained at a time which will assure that the security instruments (financing statements in Uniform Commercial Code States) filed or recorded give the Government the required security. Under this policy the lien search normally will be obtained at the time the security instruments (financing statements in Uniform Commercial Code States) are filed or recorded. However, lien searches may be obtained after that date, but in no case later than the first withdrawal of any loan funds from the supervised bank account or delivery of the check to the borrower if it is not to be deposited in a supervised bank account. It is not intended to prohibit the obtaining of lien searches in connection with processing applications when such searches are determined to be necessary on an individual case basis, but in these cases it will be necessary to obtain continuation searches to meet the policy prescribed above.

(2) Except as otherwise provided in this section, applicants are required to obtain and pay the cost of lien searches. County Supervisors will make inquiries locally concerning the available sources through which satisfactory lien searches can be obtained at nominal cost to applicants. However, applicants should select the sources through which lien searches are made. The cost of lien searches may be paid from the proceeds of loan checks when necessary.

(i) State Directors may authorize the employees of a particular County Office unit to make lien searches without cost to applicants when the cost of lien searches is exorbitant, or when such service is not available from other sources, or when experience has shown that the service available will cause undue delay in the closing of loans or make it difficult to comply with the provisions of subparagraph (1) of this paragraph.

(ii) County Office employees may make continuation lien searches when such searches are made as referred to in the last sentence of subparagraph (1) of this paragraph, or if such lien searches are required, as determined by the State Director, in connection with subsequent mortgages taken to describe additional chattels purchased with loan funds.

(3) State Directors will prescribe the minimum requirements for lien searches, including the records to be searched and the period to be covered with respect to each.

(c) *Taking security instruments.* County Office employees in bonded positions are authorized to execute and file or record, as appropriate, any legal instruments necessary to obtain or preserve security for loans. This includes financing statements, chattel mortgages and similar lien instruments, as well as severance agreements, consent and subordination agreements, affidavits, acknowledgments, and other instruments. When security agreements, chattel mortgages, or other similar lien instruments are taken, all outstanding operating loan notes, and all notes representing other operating-type debts as prescribed by the respective loan making regulations, will be described on such security instruments. Security property will be described as indicated in the column headings of the chattel mortgage or security agreement. The property to be described should be reconciled with any existing security instruments and Form FHA 462-1, "Record of the Disposition of Security Property." Unless otherwise prescribed by the State Director, livestock should be described by groups. For example: "40 cows; Hereford; white face; Brand 'XX'; 900-1,200 lbs; 3-7 yrs." If a lien is to be taken on farm products which at the time are being held for feed or for sale (in storage on the farm, in the warehouse, or elsewhere) that cannot be described readily under the column headings of the Item for describing livestock, and so forth, an appropriate description of such property will be inserted in such Item below the other property without regard to the column headings. Likewise, if a lien is to be taken on a fixture or on recreational or fishing equipment that cannot be described readily under the column headings of the Item for describing farm equipment, and so forth, an appropriate description of such property will be inserted in such Item below the other property without regard to the column headings. The serial or motor number should be shown on only major items of farm equipment. With respect to the description of fish, timber, forestry products, or intangibles, the advice of the Office of General Counsel will be obtained in individual cases unless the State Director has issued instructions on the subject.

(1) *Chattel mortgage States.* In cases in which capital goods are to be purchased and covered by a lien, the County Supervisor will encourage the applicant to make preliminary arrangements for the purchase of as many such items as is feasible by the time the initial mortgage is taken, particularly in States in which the after-acquired property clause is not relied on. The taking of security in closing loans will be governed by the following requirements:

(i) *Initial mortgages.* If all of the loan funds are deposited in a supervised bank account, the initial mortgage to secure the loan will be taken not later than the date of the first withdrawal of any of the loan funds from such account. If only a part or none of the loan funds is deposited in a supervised bank account, the initial mortgage to secure the loan will be taken not later than the time of the delivery of the loan check to the applicant.

(ii) *Subsequent mortgages.* If, at the time the initial mortgage is taken under the requirements of subdivision (i) of this subparagraph, a part of the property which is to serve as security for the loan is yet to be purchased, a mortgage will be taken on such property at the time it is purchased unless the after-acquired property clause in the mortgage gives the Government a valid first lien on such property.

(2) *Uniform Commercial Code States*—(i) *Initial loans.* In initial loan cases the financing statement and security agreement will be taken at the time the note is executed. The printed form of the financing statement describes certain types of collateral. If other items of collateral are to serve as security, they should be described by types or individual items in the space provided in the financing statement for that purpose. When the initial security agreement does not describe individually or by groups all of the collateral that is to serve as security, an all inclusive security agreement will be taken as soon as all of the security property has been purchased.

(ii) *Subsequent loans*—(a) *Financing statements.* A filed FHA financing statement is effective for a period of five years from the date of filing and as long thereafter as it is continued as provided in Subpart A, Part 1871 of this chapter. If the filed financing statement is still effective and covers all types of collateral that are to serve as security for the subsequent loan and describes the land on which crops or fixtures are or are to be located, a new financing statement will not be required. However, when a new financing statement is needed it will be taken at the time the subsequent loan note is executed.

(b) *Security agreements.* An additional security agreement will not be taken in a subsequent loan case until it is required by Subpart A, Part 1871 of this chapter or by the State Director, if the existing security agreement covers all kinds of collateral that are to serve as security for the subsequent loans, describes the land on which the crops or fixtures are or are to be located, and was taken within 1 year before the crops become growing crops, unless otherwise prescribed by the State Director.

(c) *Loan not previously secured.* If a subsequent loan is being made and the Operating loan indebtedness is being secured for the first time under the Uniform Commercial Code, the procedure in subdivision (i) of this subparagraph with respect to securing initial loans will be followed.

(d) *Executing and recording or filing—Crop and chattel mortgages.* Crop and chattel mortgages must be delivered or mailed to the recording office for recordation or filing, whichever is appropriate, the same day such instruments are executed and delivered to the FHA, provided: (i) Executed lien instruments received too late in the day to be delivered or mailed to the recording office on that day will be delivered or mailed not later than the next work day; and (ii) in those cases in which lien instruments are taken before delivery of the loan checks, such instruments will be delivered or mailed to the recording official for filing or recording by the time the loan check is delivered. With respect to (ii) above, care should be exercised to prevent the filing or recording of security instruments in cases in which the loan check is not delivered to the borrower.

(2) *Financing statements and security agreements.* Ordinarily, financing statements will be delivered or mailed to the filing officer(s) for filing or recording, whichever is appropriate, when the loan is approved. However, when this is not practical the financing statement may be filed at a later date but not later than the first withdrawal of any loan funds from the supervised bank account or delivery of the check to the borrower if it is not to be deposited in a supervised bank account. If crops or other property of a borrower are or are to be located in a State other than that of the borrower's residence, the County Supervisor servicing the loan will contact the County Supervisor in the other State for information as to the financing statement and security agreement forms to be used and the place(s) of filing of the financing statement in the other State. Security agreements will not be filed or recorded unless otherwise prescribed by the State Director because of special State law requirements.

(e) *Security requirements in relations to "Future Advance" and "After-Acquired Property" clauses and special state statutes*—(1) *Uniform Commercial Code States.* A properly prepared, executed, and filed FHA financing statement and a properly prepared and executed FHA security agreement give FHA a security interest in the property described thereon to secure any operating and emergency loan indebtedness owed by the debtor, including any such future loans, advances, or expenditures without regard to whether they are evidenced by promissory notes described on the security agreement, and also to secure any other FHA debts evidenced by notes described on the security agreement and any advances or expenditures made in connection with the debts evidenced by such notes. Any after-acquired property, except fixtures, of the same type as described (individually or generally), on the financing statement and security agreement will serve as security for the debt covered thereby. However, third parties will obtain purchase money security interests which have priority over FHA's after acquired security interests when they sell on credit or lend funds to purchase:

(i) Farm equipment costing $2,500 or less (other than fixtures or motor vehicles required to be licensed), provided they take a security agreement even though they do not file a financing statement.

(ii) Farm equipment (including fixtures and motor vehicles whether or not required to be licensed), livestock or other farm personal property regardless of the amount of the purchase price, provided they take a security agreement and file a financing statement within 10 days after the purchaser receives possession, and they also take the necessary action to have the security interest noted on the certificates of title of motor vehicles required to be licensed.

(2) *Chattel mortgage States.* The State Director will inform employees in chattel mortgage States, with the advice of the Office of General Counsel, whether the "Future Advance" and "After-Acquired Property" clauses in chattel mortgages are legally effective and the requirements for taking security in relation to such clauses, and whether State statutes authorize taking liens, in advance of the purchase, on property to be purchased with loan funds and, if so, the requirements for taking such liens.

(f) *Fees.* Statutory fees for filing or recording mortgages, financing statements, or other legal instruments and notary and lien search fees incident to loan transactions in all cases will be paid by the borrower from personal funds or from the proceeds of the loan.

(1) Whenever cash is accepted by FHA personnel to be used to pay the filing or recording fees for security instruments (including financing statements), or the cost of making lien searches, Form FHA 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FHA personnel who accept custody of such fees will make it clear to the borrower that the amount so accepted is not received by the Government as credit on the borrower's indebtedness, but is accepted only for the purpose of paying the recording, filing, or lien search fees on behalf of the borrower.

§ 1831.35 Revision in the use of Operating loan funds.

(a) *Authority of the County Supervisor or Assistant County Supervisor.* The County Supervisor or Assistant County Supervisor is authorized to approve changes in the purposes for which loan funds are to be used provided:

(1) The loan was within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect the the soundness of the farming operation, the recreational enterprise, or the Government's interest. If the County Supervisor is uncertain as to the probable effect the change would have on the soundness of the farming operation or on the Government's interest, he should obtain the advice of the State Director prior to approving the change.

(b) *Authority of State Office officials.* (1) The State Director may delegate additional authority to County Supervisors to approve certain kinds of changes in the use of loan funds upon prior approval of the National Office.

(2) The State Director and employees in the State Office who have loan approval authority are authorized to approve changes in the use of loan funds provided the changes are consistent with authorities, policies, and limitations for making operating loans.

(c) *Documentation and routines.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on Form FHA 441-1. However, when funds loaned for the purchase of capital goods are to be used to meet operating expenses, the borrower must agree to repay the funds so used in accordance with the repayment terms prescribed in § 1831.9. Appropriate changes with respect to the repayments will be made in Table K of Form FHA 431-2 and initialed by the borrower.

Dated: October 12, 1967.

HOWARD BERTSCH,
Administrator,
Farmers Home Administration.

[F.R. Doc. 67-12304; Filed, Oct. 17, 1967; 8:47 a.m.]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 1, Amdt. 4]

PART 105—STANDARDS OF CONDUCT

Miscellaneous Amendments

Part 105 of Title 13 of the Code of Federal Regulations is hereby amended:

§ 105.735-3-3 [Amended]

1. Paragraph (i) of § 105.735-3-3 *Gratuities or compensation from non-Government sources,* is revised to read as follows:

(i) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

2. Paragraph (j) of § 105.735-3-3 is hereby amended by substituting the citation "5 U.S.C. 7341" for the citation "5 U.S.C. 114-115a" therein.

3. A new paragraph (k) is added to § 105.735-3-3 to read as follows:

(k) Neither this section nor section 105.735-4-6 precludes an employee from

receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

§ 105.735-4-4 [Amended]

4. Paragraph (a) of § 105.735-4-4 is hereby amended by substituting the citation "31 U.S.C. 638a" for the citation "5 U.S.C. 78(c)(2)" therein.

§ 105.735-4-6 [Amended]

5. Subparagraph (3) of paragraph (e) of § 105.735-4-6 is deleted.

5. Paragraphs (a), (b), (c), and (d) of § 105.735-4-7 thereof are revised to read as follows:

§ 105.735-4-7 Employees required to submit statements of employment and financial interests.

(a) Statements of employment and financial interests shall be submitted by:

(1) All employees paid at Executive Levels IV and V of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(2) The General Counsel, the Deputy General Counsel, the Assistant Administrator for Planning, Research and Analysis, the Deputy Assistant Administrator for Planning, Research and Analysis, the Assistant Administrator for Congressional and Public Affairs, the Deputy Assistant Administrator for Congressional and Public Affairs, the Assistant Administrator for Administration, the Deputy Associate Administrator for Financial Assistance, the Deputy Associate Administrator for Procurement and Management Assistance, Hearing Examiners and Area Administrators.

(3) All branch managers Grade GS-12 or above, and all employees classified at GS-13 or above who make decisions or take final action in regard to:

(i) Contracting;

(ii) Regulating or licensing small business investment companies;

(iii) Granting financial assistance;

(iv) Issuing certificates of competency; and

(v) Making size determinations.

Area Administrators will inform the incumbents of the affected field positions that they are required to file such statements while Associate and Assistant Administrators and the General Counsel will so inform the incumbents of the affected Washington Office positions under their jurisdiction.

(b) (1) Statements of employment and financial interests required to be filed by Washington Office employees shall be submitted to the SBA Standards of Conduct Counselor while such statements required to be filed by field employees shall be submitted to the Area Standards of Conduct Counselor. The Area Counsel are hereby designated Area Standards of Conduct Counselors for their respective Areas. Each such statement shall be held in confidence and no information therefrom may be disclosed except as the Civil Service Commission or the Administrator may determine for good cause shown. Employees designated to review statements are responsible for maintaining them in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part.

(2) Statements of employment and financial interests shall be submitted by employees within 30 days after becoming incumbents of positions subject to this section. Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of 18 U.S.C. 208 or of this part.

(c) Any employee who complains that his position has been improperly included under the requirements of this section as one requiring the submission of a statement of employment and financial interests may, if he so desires, have opportunity for review of his complaint under the Agency grievance procedure as set forth in ND 370-3.

(d) [Reserved]

6. By revising § 105.735-4-10 to read as follows:

§ 105.735-4-10 Review of statements of employment and financial interests.

Statements of employment and financial interests and supplementary statements thereto shall be reviewed only by the Area Standards of Conduct Counselor or the SBA Standards of Conduct Counselor, as appropriate. The appropriate Standards of Conduct Counselor shall determine when and how any employee or special Government employee shall be provided an opportunity to explain any real or apparent conflict of interest disclosed by statements of employment and financial interests or revealed by information from other sources. The opportunity to explain shall in all cases be provided an employee or special Government employee concerned. In the event the conflict, real or apparent, is not resolved at the Standards of Conduct Counselor level, the matter shall be forwarded to the SBA Standards of Conduct Counselor who shall present the entire matter to the Ad Hoc Committee (established by § 105.735-10). The Ad Hoc Committee shall report the matter, together with its recommendations, to the Administrator.

§ 105.735-5-1 [Amended]

7. Paragraph (a) of § 105.735-5-1 is hereby amended by substituting the citation "5 U.S.C. 7324" for the citations "5 U.S.C. 633(2)6, 118i" therein.

§ 105.735-5-2 [Amended]

8. Paragraph (a) of § 105.735-5-2 is hereby amended by substituting the citations "5 U.S.C. 7311; 18 U.S.C. 1918" for the citations "5 U.S.C. 118p, 118r" therein.

§ 105.735-5-3 [Amended]

9. Section 105.735-5-3 is hereby amended by substituting the citation "18 U.S.C. 1918" for the citations "5 U.S.C. 118p, 118r" therein.

§ 105.735-11 [Amended]

10a. Paragraph (d) of § 105.735-11 is hereby amended by substituting the citations "5 U.S.C. 7311; 18 U.S.C. 1918" for the citations "5 U.S.C. 118p, 118r" therein.

b. Paragraph (g) of § 105.735-11 is hereby amended by substituting the citation "5 U.S.C. 7352" for the citation "5 U.S.C. 640" therein.

c. Paragraph (h) of § 105.735-11 is hereby amended by substituting the citation "31 U.S.C. 638a" for the citation "5 U.S.C. 78c" therein.

d. Paragraph (j) of § 105.735-11 is hereby amended by substituting the citation "18 U.S.C. 1917" for the citation "5 U.S.C. 637" therein.

e. Paragraph (p) of § 105.735-11 is hereby amended by substituting the citation "5 U.S.C. 7324" for the citation "5 U.S.C. 118i" therein.

These amendments were approved by the Civil Service Commission on September 26, 1967, and are effective upon publication in the FEDERAL REGISTER.

Dated: October 10, 1967.

ROBERT C. MOOT,
Administrator.

[F.R. Doc. 67-12293; Filed, Oct. 17, 1967; 8:47 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 the Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

POLOXALENE

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Smith Kline and French Laboratories, 1500 Spring Garden Street, Philadelphia, Pa. 19101, and other relevant material, has concluded that § 121.295 should be amended (1) to provide for the safe use of poloxalene in cattle feed as set forth below and (2) to include specifications for the identity of the additive. Therefore, pursuant to the provisions of the Federal Food, Drug, and

Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120), § 121.295 is revised to read as follows:

§ 121.295 Poloxalene.

The food additive poloxalene may be safely used in accordance with the following prescribed conditions:

(a) The additive consists of polyoxypropylene-polyoxyethylene glycol nonionic block polymer meeting the following specifications:

(1) Molecular weight range: 2,850–3,150.

(2) Hydroxyl number: 35.7–39.4.

(3) Cloud point (10 percent solution): 42° C.–46° C.

(4) Structural formula:

$$HO(CH_2\text{-}CH_2\text{-}O)_{12}(\underset{\underset{CH_3}{|}}{CH}\text{-}CH_2\text{-}O)_{24}(CH_2CH_2\text{-}O)_{12}H$$

(b) It is used or intended for use as follows:

Principal ingredient	Amount	Limitations	Indications for use
	Grams per 100-lb. body weight per day		
1. Poloxalene	1.5	For cattle in molasses block containing 6.6% of the additive; administer at 0.8 oz. of block per 100-lb. body weight per day.	Prevention of legume (alfalfa, clover) bloat.
2. Poloxalene	1.0–2.0	For cattle; administer in feed starting 2 to 3 days prior to exposure and continuing during exposure to bloat-producing conditions, at 1 to 2 gm. per 100-lb. of body weight according to bloat-producing conditions.	Do.

(c) The label and labeling shall bear, in addition to the other information required by the act:

(1) The name of the additive.

(2) Adequate directions and warnings for use.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: October 10, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-12317; Filed, Oct. 17, 1967; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 6932]

PART 400—TEMPORARY REGULATIONS UNDER THE FEDERAL TAX LIEN ACT OF 1966

In order to prescribe temporary regulations, which shall remain in force and effect until superseded by permanent regulations, relating to refiling of notice of tax lien under section 6323(g) of the Internal Revenue Code of 1954, as amended by section 101(a) of the Federal Tax Lien Act of 1966 (80 Stat. 1125), the following regulations are hereby prescribed:

Sec.
400.1 Statutory provisions; refiling of notice of tax lien.
400.1-1 Refiling of notice of tax lien.

AUTHORITY: The provisions of this Part 400 issued under sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805.

§ 400.1 Statutory provisions; refiling of notice of tax lien.

SEC. 6323. *Validity and priority against certain persons.* * * *

(g) *Refiling of notice.* For purposes of this section—

(1) *General rule.* Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.* A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.* In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.* Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

* * * * *

[Sec. 6323(g) as added by sec. 101(a), Federal Tax Lien Act of 1966 (80 Stat. 1125)]

§ 400.1-1 Refiling of notice of tax lien.

(a) *Scope.* This section provides rules with respect to the provisions contained in section 6323(g), relating to the refiling of a notice of lien arising under section 6321. In general, section 6323(g) contains new rules requiring the Internal Revenue Service to refile a notice of lien during the 1-year period ending 30 days after the expiration of the normal 6-year statutory period for collection of an assessed tax liability, and each succeeding period of 6 years, in order to maintain the effectiveness of a notice of lien. These provisions in section 6323 were added by section 101(a) of the Federal Tax Lien Act of 1966 (80 Stat. 1125), effective after November 2, 1966.

(b) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (c) of this section during the required refiling period (described in paragraph (d) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provisions of paragraphs (c)(1)(i) and (d) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of the other notice or notices of lien. Thus, except for the filing of a notice of lien required by paragraph (c)(1)(ii) of this section relating to a change of residence, the validity of any refiling of a notice of lien is not affected by the refiling or non-refiling of any other notice of lien. The effectiveness of a timely refiled notice of lien relates back to the date on which the notice of lien was effective before the refiling. If the district director fails to refile a notice of

lien in the manner described in paragraphs (c) and (d) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the district director to refile a notice of lien during the required refiling period will not affect the effectiveness of the notice with respect to (1) property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or (2) property which has been levied upon by the United States prior to the expiration of the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien. If a notice of lien is not refiled, and if the lien is still in existence, the Internal Revenue Service may nevertheless file a new notice of lien either on the form prescribed for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of section 6323(f) and is effective from the date on which such filing is made. Upon written request of any person who has a proper interest, any district director may issue a certificate of release of lien if notice of the lien has not been refiled within the required refiling period and the entire liability for the tax has been satisfied or has become unenforceable as a matter of law. Such request should be sent to the district director for the internal revenue district shown on the notice of lien. For provisions relating to certificates of release of lien, see section 6325.

(c) *Place for refiling notice of lien*—(1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (d) of this section) shall be effective only—

(i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of section 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of the notice of lien under subdivision (i) of this subparagraph is completed, the Internal Revenue Service receives written information (in the manner described in subparagraph (2) of this paragraph) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with section 6323(f)(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located without the United States, in the District of Columbia). If on or before such 90th day more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. This subdivision is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under subdivision (i) of this subparagraph is completed.

(2) *Notice of change of taxpayer's residence*—(i) *In general.* Except as provided in subdivision (ii) of this subparagraph, for purposes of this section, a notice of change of a taxpayer's residence will be effective only if it is received, in writing, by the Internal Revenue Service from the taxpayer or his representative, relates to an unpaid tax liability of the taxpayer, and states the taxpayer's name and address of his new residence. Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. For purposes of this subdivision, a notice of change of a taxpayer's residence shown on a return or an amended return (including a return of the same tax) will not be effective to notify the Internal Revenue Service.

(ii) *By return or amended return.* For purposes of this section, in the case of a notice of lien which relates to an assessment of tax made after December 31, 1966, a notice of change of a taxpayer's residence will also be effective if it is contained in a return or amended return of the same type of tax filed with the Internal Revenue Service by the taxpayer which on its face indicates that there is a change in the taxpayer's address and correctly states the taxpayer's name, address of his new residence, and his identifying number required by section 6109.

(iii) *Other rules applicable.* Other than the means specified in subdivisions (i) and (ii) of this subparagraph, no communication (either written or oral) to the Internal Revenue Service will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Service has actual notice of the taxpayer's residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Internal Revenue Service without reference to the provisions of section 7502.

(3) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A, a delinquent taxpayer, is a resident of M State and owns real property in N State. Notices of lien are properly filed in M and N States. In order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M State but is not required to refile the notice of lien with the appropriate office in N State. Similarly, in order to continue the effect of the notice of lien filed in N State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in N State but is not required to refile the notice of lien with the appropriate office in M State.

Example (2). B, a delinquent taxpayer, is a resident of M State. Notice of lien is properly filed in that State. One year before the required refiling period, B establishes his residence in N State, and B immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in M State, and (ii) the appropriate office in N State because B properly notified the Internal Revenue Service of his change in residence to N State more than 89 days prior to the date refiling of the notice of lien in M State is completed. If B did not notify the Internal Revenue Service of his change in residence to N State in accordance with the provisions of paragraph (c)(2) of this section, the Internal Revenue Service would not be required to file a notice of lien in N State, even if the Internal Revenue Service had actual notice of B's change in residence to N State. In this latter case, in order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien only with the appropriate office in M State.

Example (3). C, a delinquent taxpayer, is a resident of O State. Notice of lien is properly filed in that State. Four years before the required refiling period, C establishes his residence in P State, and C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. Three years before the required refiling period, C establishes his residence in R State, and again C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in O State, and (ii) the appropriate office in R State since the notice received by the Service of C's change in residence to R State was the most recent notice received more than 89 days prior to the date refiling in O State is completed. The notice of lien is not required to be filed in P State, even though C properly notified the Internal Revenue Service of his change in residence to P State, because such notice is not the most recent one received.

Example (4). Assume the same facts as in example (3), except that C does not notify the Internal Revenue Service of his change in residence to R State in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with (i) the appropriate office in O State, and (ii) the appropriate office in P State because C properly notified the Internal Revenue Service of his change in residence to P State, even though C is not a resident of P State on the date refiling of the notice of lien in O State is completed. The Internal Revenue Service is not required to file a notice of lien in R State because C did not properly notify the Service of his change in residence to R State.

Example (5). D, a delinquent taxpayer, is a resident of M State and owns real property in N and O States. The Internal Revenue Service properly files notices of lien in M, N, and O States. Five years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P State, and at that time the Internal Revenue Service received from D a notification of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. On a date which is 5 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O States which refilings continue the effect of each of the notices

of lien. The Internal Revenue Service is not required to file a notice of lien in P State because D did not notify the Internal Revenue Service of his change of residence to P State more than 89 days prior to the date each of the refilings in M, N, and O States was completed.

Example (6). Assume the same facts as in example (5) except that the refiling of the notice of lien in O State occurs 100 days after D notifies the Internal Revenue Service of his change in residence to P State in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, in addition to refiling the notice of lien in O State, the Internal Revenue Service must also file, during the required refiling period, a notice of lien in P State because D properly notified the Internal Revenue Service of his change of residence to P State more than 89 days prior to the date the refiling in O State was completed. However, in order to maintain the effect of the refilings in M and N States, the Internal Revenue Service is not required to file, during the required refiling period, the notice of lien in P State since D did not notify the Internal Revenue Service of his change in residence to P State more than 89 days prior to the date the refilings in M and N States were completed.

Example (7). E, a delinquent taxpayer, is a resident of T State. Because T State has not designated one office in the case of personal property for filing notices of lien in accordance with the provisions of section 6323(f)(1)(A)(ii), the Internal Revenue Service properly files a notice of lien with the clerk of the appropriate United States district court. However, solely as a matter of convenience for those who may have occasion to search for notices of lien, and not as a matter of legal effectiveness, the Internal Revenue Service also files notice of lien with the recorder of deeds of the county in T State where E resides. In addition, the Internal Revenue Service sent a copy of the notice of lien to the X Life Insurance Company to give the Company actual notice of the notice of lien. In order to continue the effect of the notice of lien, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the clerk of the appropriate U.S. district court. It is not necessary in order to continue the effect of the notice of the lien to refile the notice of lien with the recorder of deeds of the county where E resides because the refiling of the notice of lien with the recorder of deeds does not constitute a proper filing for the purposes of section 6323(f). In addition, it is not necessary to continue the effect of the notice of lien under this section to send a copy of the notice of lien to the X Life Insurance Company because the sending of a notice of lien to an insurance company does not constitute a filing for the purposes of section 6323 and, thus, a refiling with an insurance company is not required under this section.

(d) *Required refiling period*—(1) *In general*. For the purpose of this section, except as provided in subparagraph (2) of this paragraph, the term "required refiling period" means—

(i) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(ii) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(2) *Tax assessments made before January 1, 1962*. If the assessment of the tax is made before January 1, 1962, the first required refiling period shall be the calendar year 1967. Thus, to maintain the effectiveness of any notice of lien on file which relates to a lien which arose before January 1, 1962, the Internal Revenue Service will refile the notice of lien during the calendar year 1967. The second required refiling period for any such notice of lien is the calendar year 1973.

(3) *Examples*. The provisions of this paragraph may be illustrated by the following examples:

Example (1). On March 1, 1963, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 1, 1963, a notice of lien is properly filed. The notice of lien filed on July 1, 1963, is effective up to and including March 31, 1969. The first required refiling period for the notice of lien begins on April 1, 1968, and ends on March 31, 1969. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 1, 1963, up to and including March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

Example (2). Assume the same facts as in example (1), except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (Apr. 1, 1968, through Mar. 31, 1969). However, a notice of lien which meets the requirements of section 6323(f) is filed on June 2, 1971. Because of this filing, the notice of lien filed on June 2, 1971, is effective as of June 2, 1971. That notice must itself be refiled during the 1-year period ending on March 31, 1975, if it is to continue in effect after March 31, 1975. As in example (1), the second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

Example (3). On April 1, 1960, an assessment of tax is made against B, a delinquent taxpayer, and a tax lien for the amount of the assessment arises on that date. On June 1, 1962, a notice of lien is properly filed. Because the assessment of tax was made before January 1, 1962, the notice of lien filed on June 1, 1962, is effective up to and including December 31, 1967. The first required refiling period for the notice of lien is the calendar year 1967. A refiling of the notice of lien during 1967 will extend the effectiveness of the notice of lien filed on June 1, 1962, up to and including December 31, 1973. The second required refiling period for the notice of lien is the calendar year 1973.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

[SEAL] WILLIAM H. SMITH,
Acting Commissioner of Internal Revenue.

Approved: October 13, 1967.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

[F.R. Doc. 67-12328; Filed, Oct. 17, 1967; 8:49 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 8—PREFERENCE IN FEDERAL PROCUREMENT FOR SECTIONS AND AREAS OF HIGH UNEMPLOYMENT

Miscellaneous Amendments

Pursuant to Defense Manpower Policy No. 4 of the Office of Emergency Planning (32A CFR Ch. 1, DMP 4), I hereby amend 29 CFR Part 8 as set forth below.

As these regulations involve only matters that relate to public contracts, notice of proposed rule making, public participation in their adoption, and delay in their effective date are excepted from the requirements of section 4 of the Administrative Procedure Act (5 U.S.C. 553). I do not believe that such procedure will serve a useful purpose here. Accordingly, the amendments shall become effective immediately.

1. The title of Part 8 is revised to read as set forth above.

2. Section 8.1 is revised to read as follows:

§ 8.1 Purpose.

(a) This part implements the responsibilities of the Secretary of Labor in determining sections of concentrated unemployment or underemployment, and areas of persistent or substantial labor surplus in accordance with Defense Manpower Policy No. 4 of the Office of Emergency Planning (32A CFR Ch. 1, DMP 4), and areas of substantial unemployment, in accordance with Executive Order 10582 (3 CFR 1954-58 Comp., P. 230) issued pursuant to the Buy American Act (41 U.S.C. 10a et seq.).

(b) Defense Manpower Policy No. 4 provides that preference be given in the placement of Federal Government contracts and facilities to sections of concentrated unemployment or underemployment, and areas of persistent or substantial labor surplus with preference being given in accordance with regulations prescribed by the Secretary of Labor. The Secretary of Labor is directed to classify sections of concentrated unemployment or underemployment, and areas having a persistent or substantial surplus of labor, under standards to be established by the Secretary, and to certify to the existence of a persistent or substantial labor surplus in areas not meeting the minimum size requirements for classification. The Secretary of Labor is also directed to certify employing establishments which will perform contracts in or near sections of concentrated unemployment or underemployment and which comply with regulations of the Secretary for employment of disadvantaged applicants.

(c) Section 3(c) of Executive Order 10582 issued pursuant to the Buy American Act permits rejection by executive agencies of any foreign bid or offered price for materials in any situation in which the domestic low bidder would produce substantially all of the materials

in areas of substantial unemployment, as determined by the Secretary of Labor, during such period as the President determines that such preference would be in the national interest.

3. A new paragraph (c) is added to § 8.5 to read as follows:

§ 8.5 Termination of classification.

* * * * *

(c) The Secretary of Labor shall terminate the designation of a section of concentrated unemployment or underemployment whenever he finds that the conditions of unemployment or underemployment have improved to the extent that the designation is no longer warranted.

4. Section 8.6 is revised to read as follows:

§ 8.6 Publication or certification.

The Secretary of Labor will publish at regular intervals the list of sections of concentrated unemployment or underemployment and areas of persistent or substantial unemployment except that in the case of an area of less than 1,500 population he will not publish but on request will authorize the appropriate State employment security agency to certify that such area is one of substantial or persistent unemployment if it meets the qualifying conditions set forth in § 8.3 or § 8.4 of this part.

5. A new § 8.7 is established to read as follows:

§ 8.7 Classification of sections of concentrated unemployment or underemployment and certification of eligible firms.

(a) The Secretary of Labor will classify as sections of concentrated unemployment or underemployment appropriate sections of States or "labor areas".

(b) Firms in or near such classified sections of concentrated unemployment or underemployment shall be certified by the Secretary as eligible for preference in the placement of federal government contracts or subcontracts under Defense Manpower Policy No. 4, provided that such firms have agreed to employ in the performance of such contracts or subcontracts, in accordance with plans approved by the Secretary of Labor, a proportionate number of disadvantaged persons residing within the classified sections and who have either been identified or referred to the employer by a State Employment Service or constituent local public employment office affiliated with the U.S. Employment Service of the Department of Labor. Firms so certified which will perform a substantial portion of a federal government contract, or other firms which will place a substantial portion of the federal government contract with such certified firms shall obtain preference in accordance with § 8.8.

6. A new § 8.8 is established to read as follows:

§ 8.8 Order of preference.

The order of preference for the placement of contracts under Defense Manpower Policy No. 4 is as follows:

(a) Firms eligible for preference in accordance with paragraph (b) of § 8.7;

(b) Firms which will perform a substantial portion of a contract in an area of persistent unemployment; and

(c) Firms which will perform a substantial portion of a contract in an area of substantial unemployment.

Signed at Washington, D.C., this 16th day of October 1967.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 67-12395; Filed, Oct. 17, 1967; 8:50 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VI—Department of the Navy

SUBCHAPTER B—NAVIGATION

PART 706—NAVIGATIONAL LIGHT WAIVERS

Certifications of Secretary of the Navy

Scope and purpose. Sections 360 and 1052 of Title 33, United States Code, provide that the requirements of the Regulations for Preventing Collisions at Sea, 1960, the Inland Rules, the Great Lakes Rules and the Western River Rules, as to number, position, range of visibility or arc of visibility of lights required to be displayed by vessels shall not apply to any vessel of the Navy when the Secretary of the Navy shall find or certify that, by reason of special construction, it is not possible for such vessel or class of vessels to comply with the statutory provisions as to navigation lights.

A recent study indicates that the military design characteristics of the Mine Countermeasures Support Ships (MCS 1 Class) preclude the installation of the after 20-point white light (range light) as required by Rule 2(a) of the Regulations for Preventing Collisions at Sea (33 U.S.C. 1062(a)).

I hereby certify that these Mine Countermeasures Support Ships (MCS 1 Class) are naval vessels of special construction and, with respect to the position on such vessels of the after 20-point white light, it is not possible to comply with the requirements of the statutes enumerated in sections 360 and 1052, Title 33, United States Code.

Further, I do find that it is feasible to locate the said navigation light as follows:

(a) The after 20-point white light will be located properly as regards vertical and horizontal placement, however, the arc of visibility of the light will be obstructed for approximately 1° when viewed from dead ahead.

Further, I certify that such a location constitutes compliance as closely with the applicable statutes as I hereby find to be feasible.

I do direct that Note 12 of § 706.2, Title 32, Code of Federal Regulations, as published in the FEDERAL REGISTER of November 27, 1965 (30 F.R. 14707), be amended to read as follows:

12. On Mine Countermeasures Support Ships (MCS 1 Class), the after anchor light will be carried at a height not less than 4 feet lower than the forward anchor light in lieu of the required 15 feet (based on International Rule 11(b)). The after 20-point white light will be obstructed, in arc of visibility, for approximately 1° when viewed from dead ahead.

I specify that the foregoing amendment shall become effective on the date of publication of this document in the FEDERAL REGISTER.

(Sec. 1, 59 Stat. 590, Sec. 2, 77 Stat. 194, 33 U.S.C. 360, 1052)

Dated: October 5, 1967.

[SEAL] PAUL R. IGNATIUS,
Secretary of the Navy.

[F.R. Doc. 67-12270; Filed, Oct. 17, 1967; 8:45 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Emergency Planning

[Defense Manpower Policy 4, Revised]

DMP 4—PLACEMENT OF PROCUREMENT AND FACILITIES IN SECTIONS AND AREAS OF HIGH UNEMPLOYMENT

Pursuant to the authority vested in me by Executive Order No. 10480 and Executive Order No. 11051, as amended, Defense Manpower Policy No. 4 is hereby amended to read as follows:

1. *Introduction.* Success of the defense program depends upon efficient use of all our resources, including manpower and facilities, which are preserved through practice of the skills of both management and workers.

A primary aim of Federal manpower policy is to encourage full utilization of existing production facilities and workers in preference to creating new plants or moving workers, thus assisting in the maintenance of economic balance and employment stability. When large numbers of workers move to already tight areas, heavy burdens are placed on community facilities—schools, hospitals, housing, transportation, utilities, etc. On the other hand, when unemployment develops in certain areas, unemployment compensation costs increase and plants, tools, and workers' skills remain idle and unable to contribute to our defense program.

2. *Purpose.* It is the purpose of Defense Manpower Policy No. 4 to direct attention to the potentialities of sections of concentrated unemployment or underemployment and of areas of persistent or substantial labor surplus for the placement of procurement contracts or the location of new plants or facilities, and to assign responsibilities to specified officials of the Government to carry out the policy stated below.

3. *Policy.* It is the policy of the Federal Government to encourage the placing of contracts and facilities in sections

of concentrated unemployment or underemployment and in areas of persistent or substantial labor surplus with preference being given in accordance with regulations prescribed by the Secretary of Labor in making the best use of their available resources in order to achieve the following objectives:

(a) To preserve management and employee skills necessary to the fulfillment of Government contracts and purchases;

(b) To maintain productive facilities;

(c) To improve utilization of the Nation's total manpower potential by making use of the manpower resources of each area;

(d) To help assure timely delivery of required goods and services and to promote readiness for expanded efforts by locating procurement where the needed manpower and facilities are fully available.

4. *Implementation.* By virtue of the authority vested in me by Executive Order No. 10480 and Executive Order No. 11051, as amended, and to carry out the purpose and policy objectives set forth above, the following assignments of responsibilities are made to the specified officials of the Government:

(a) The Secretary of Labor shall:

(1) Classify sections of concentrated unemployment or underemployment, and areas having a persistent or substantial surplus of labor under standards to be established by the Secretary of Labor.

(2) In cooperation with State and local authorities, provide labor market data and related economic information in efforts to assist in the initiation of industrial expansion programs in these areas.

(3) Identify skills which are in surplus supply within such sections and areas and make this information available to firms requiring such skills and interested in establishing new plants and facilities.

(4) Identify occupations and skills for which labor will be needed by new or expanding industries; and, in collaboration with other government agencies, make assistance available to area institutions and manpower users in developing on-the-job apprentice or other training programs for developing skills of the workforce.

(5) Certify employing establishments which have agreed to perform contracts in or near sections of concentrated unemployment or underemployment and which have agreed to comply with regulations of the Secretary of Labor with respect to the employment of disadvantaged applicants.

(6) Prescribe regulations establishing the order of preference in which procurement contracts shall be awarded with respect to sections of concentrated unemployment and underemployment and areas of persistent or substantial labor surplus.

(b) All procurement agencies shall:

(1) Use their best efforts to award negotiated procurement contracts to contractors who will perform a substantial proportion of the production on those contracts within or near sections of concentrated unemployment or underemployment or within labor surplus areas, giving preference to contractors in accordance with regulations prescribed by the Secretary of Labor to the extent that procurement objectives will permit; *Provided,* That in no case shall price differentials be paid for the purpose of carrying out this policy.

(2) Where deemed appropriate, set-aside portions of procurements for negotiations at prices no higher than those paid on the balance of these procurements exclusively with firms which have agreed to perform or cause to be performed a substantial proportion of the production on these contracts within or near sections of concentrated unemployment or underemployment or within labor surplus areas, giving preference to firms in accordance with regulations prescribed by the Secretary of Labor: *Provided further,* That firms which have agreed to perform in areas not meeting the minimum size qualifications for classification by the Secretary of Labor shall be eligible for participation in set-asides, if these firms submit a certificate issued by the Secretary of Labor that a persistent or substantial labor surplus exists in the area in accordance with standards and procedures prescribed by the Secretary of Labor.

(3) Assure that firms that have agreed to perform contracts in or near sections of concentrated unemployment or underemployment or within labor surplus areas that are on appropriate bidders' lists will be given the opportunity to submit bids or proposals on all procurements for which they are qualified. Whenever the number of firms on a bidders' list is excessive, there will be included a representative number of firms from labor surplus areas.

(4) In the event of tie-bids or offers on any procurement, award the contract to the firm which has agreed to perform a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas by incurring costs on account of production or manufacturing in such sections or labor surplus areas (by itself or its first-tier subcontractors) that amount to a substantial proportion of the contract price, giving such preference as the Secretary of Labor may by regulation prescribe.

(5) Encourage prime contractors to award subcontracts to firms that have agreed to perform a substantial proportion of the production on those subcontracts in or near sections of concentrated unemployment or underemployment or in labor surplus areas.

(6) The preferential actions described in this policy shall be in addition to other such actions to which firms may be entitled because of performance in substantial labor surplus areas, such as additional preference under the "Buy American Act."

(7) Cooperate with the other agencies listed herein in achieving the objectives of this policy.

(c) The Secretary of Commerce shall:

(1) In cooperation with State development agencies, the Secretary of Defense, the Administrator of General Services, and the Administrator of the Small Business Administration, assist employing establishments, certified in accordance with sec. 4(a)(5) above, which have agreed to perform contracts in or near sections of concentrated unemployment or underemployment and manufacturers in areas of persistent labor surplus in obtaining Government procurement business by (a) providing such firms with timely information on proposed Government procurements; (b) maintaining current information on the manufacturing capabilities of such firms with respect to Government procurement and disseminating such information to Federal procurement agencies.

(2) Urge firms planning new production facilities (where Federal assistance or interests are involved) to consider the industrial location advantages of sections of concentrated unemployment or underemployment and labor surplus areas.

(3) Provide technical advice and counsel to groups and organizations in such sections or areas on planned industrial parks, industrial development organizations, expanding tourist business, and available Federal aids.

(d) The Administrator of the Small Business Administration shall make available to small business concerns in sections of concentrated unemployment and underemployment and labor surplus areas all of its services, endeavor to insure opportunity for maximum participation by such concerns in Government procurement, and give consideration to the needs of these concerns in the making of joint small business set-asides with Government procurement agencies.

(e) There is hereby continued in operation within the Office of Emergency Planning the Surplus Manpower Committee:

(1) This Committee shall be chaired by the Director of the Office of Emergency Planning, or his designee, and shall include representation from the Department of Defense (including the three military departments), Department of Commerce, Department of Labor, General Services Administration, and Small Business Administration.

(2) The Committee shall advise the Director of the Office of Emergency Planning on policies, procedures, and activities in existence or needed to carry out the purpose of this policy.

(3) When an entire industry, which sells a significant proportion of its production to the Government, is generally depressed or has a significant proportion of its production units located in sections of concentrated unemployment or underemployment or in areas of persistent or substantial labor surplus, the Committee may make appropriate recommendations relative to that industry in lieu of recommendations relative to specific geographical areas. In such cases, after notice to and hearing of interested parties, the Director of the Office

of Emergency Planning will give consideration to appropriate measures applicable to the entire industry.

(f) All Federal departments and agencies shall give consideration to labor surplus areas, particularly to persistent labor surplus areas, in the selection of sites for Government-financed facilities expansion, to the extent that such consideration is not inconsistent with essential economic and strategic factors that must also be taken into account.

(g) Notifications No. 38, 39, 53, 57, and 58, dealing with the placement of procurement with the textile, shoe, apparel, shipbuilding, and petroleum and petroleum products industries, are continued in effect to the extent that they are not inconsistent with this revised policy.

Effective date. This revised policy shall take effect upon the date this document is filed with the Office of the Federal Register.

Dated: October 16, 1967.

PRICE DANIEL,
Director,
Office of Emergency Planning.

[F.R. Doc. 67-12375; Filed, Oct. 17, 1967; 8:49 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER O—POLLUTION

[CGFR 67-67]

PART 151—OIL POLLUTION REGULATIONS

Implementation of International Convention for Prevention of Pollution of Sea by Oil, 1954, as Amended in 1962

1. Public Law 89-551, approved September 1, 1966 (80 Stat. 372-375), amended the provisions of the Oil Pollution Act, 1961 (33 U.S.C. 1001-1015), to implement the provisions of the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended in 1962. Among the amendments in this law is the requirement that extensions or reductions of prohibited zones effectuated in accordance with the Convention shall be "* * * published in regulations prescribed by the Secretary" (33 U.S.C. 1011). The 1962 amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, became effective on May 18, 1967. The revised descriptions of these prohibited zones are set forth in this document.

2. There were transferred to and vested in the Secretary of Transportation, by subsection 6(g) of the Department of Transportation Act (Public Law 89-670, 80 Stat. 931-950, 49 U.S.C. 1651-1659), certain functions, powers and duties previously performed by the Secretary of the Army and other officers and offices of the Department of the Army (Corps of Engineers) which included the administration of the Oil Pollution Act of 1961, as amended (33 U.S.C. 1001-1015). The Secretary of Transportation, by Department of Transportation Order 1100.1 dated March 31, 1967 (49 CFR 1.4(a)(3)(vii)), delegated to and authorized the Commandant, U.S. Coast Guard, to prescribe rules and regulations under the provisions of the Oil Pollution Act of 1961, as amended (33 U.S.C. 1001-1015).

3. The Commandant, U.S. Coast Guard, has assumed responsibility for the performance of the delegated functions, powers and duties of the Oil Pollution Act of 1961, as amended. By an order published in the FEDERAL REGISTER of April 5, 1967 (32 F.R. 5611), the Commandant, U.S. Coast Guard, announced the adoption and continuation of orders, rules, regulations, policies, procedures, privileges, waivers, and other actions which were issued, made, granted, or allowed prior to April 1, 1967, under the Oil Pollution Act of 1961, as amended. This notice also stated these actions shall continue in effect, according to their terms, until modified, terminated, repealed, superseded, or set aside by appropriate authority. Under the general superintendence of the Commandant, the administration of the Oil Pollution Act of 1961, as amended, and the implementing regulations in 33 CFR Part 212 (Corps of Engineers) are assigned to the Chief, Law Enforcement Division, Office of Operations, at Coast Guard Headquarters, and in each Coast Guard District under the District Commander to the Chief, Operations Division.

4. The purpose of this document is to revise the Oil Pollution Regulations in 33 CFR Part 212 as required to implement Public Law 89-551 (33 U.S.C. 1001-1015), and the amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended, which became effective on May 18, 1967. Additionally, these regulations reflect the transfer of administrative authority from the Secretary of the Army to the Secretary of Transportation and his delegation to the Commandant, U.S. Coast Guard.

5. By virtue of the authority vested in me as Commandant, U.S. Coast Guard, by 14 U.S.C. 632 and Department of Transportation Order 1100.1 (49 CFR 1.4(a)(3)) the following actions are ordered:

A. Effective on the date of publication of this document in the FEDERAL REGISTER, the text of 33 CFR Part 212 is canceled and at the same time replaced by revised Oil Pollution Regulations which are established as a new "Subchapter O—Pollution" containing 33 CFR Part 151, entitled "Oil Pollution Regulations", as set forth below.

B. The rules and regulations in 33 CFR Part 212 pertaining to the functions, powers, and duties previously performed by the Corps of Engineers and which were adopted and affirmed by the notice published in the FEDERAL REGISTER of April 5, 1967 (32 F.R. 5611), shall govern all matters initiated or in process on or before the date of publication of this document in the FEDERAL REGISTER until completed unless the person or organization affected specifically requests a change to the rules and regulations in this document.

C. The actions and decisions made by the officers of the Corps of Engineers prior to April 1, 1967, which were adopted and affirmed by the notice published in the FEDERAL REGISTER of April 5, 1967 (32 F.R. 5611), and by the Coast Guard under the rules and regulations in 33 CFR Part 212 shall be continued in effect, according to their terms, until modified, terminated, repealed, superseded, or set aside by appropriate authority.

Sec.
151.01 Purpose.
151.05 Vessels subject to regulations.
151.10 Definitions.
151.15 Oil Pollution Act of 1924, as amended.
151.20 Inspections and enforcement.
151.25 Boarding foreign vessels.
151.30 Prohibited Zones.
151.35 Oil Record Book.
151.40 Penalties for violations.

AUTHORITY: The provisions of this Part 151 issued under secs. 9-12, 75 Stat. 404, as amended, sec. 6(g)(5), 80 Stat. 941; 33 U.S.C. 1008-1011, 49 U.S.C. 1655(g)(5); Department of Transportation Order 1100.1, Mar. 31, 1967, 49 CFR 1.4(a)(3)(vii).

§ 151.01 Purpose.

(a) The purpose of this part is to implement the Oil Pollution Act, 1961, as amended (33 U.S.C. 1001-1015), relating to the Oil Record Book required to be maintained under specified conditions, and the publication of descriptions of prohibited zones, as well as the enforcement of the requirements regarding prevention of pollution of the sea by oil.

(b) The Oil Pollution Act, 1961, as amended (33 U.S.C. 1001-1015), implements the provisions of the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended. By section 17 of such act (33 U.S.C. 1015) it is stated that: "Any reference in any other law or rule or regulation prescribed pursuant to law to the 'International Convention for the Prevention of the Pollution of the Sea by Oil, 1954,' shall be deemed to be a reference to that Convention as revised by the 'Amendments of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954,' which were adopted by a Conference of Contracting Governments convened at London on April 11, 1962." This amended Convention became effective on May 18, 1967.

§ 151.05 Vessels subject to regulations.

(a) Subject to the exceptions provided in paragraph (b) of this section, the regulations in this part apply to any seagoing vessel of any type whatsoever of American registry or nationality, including floating craft, whether self-propelled or towed by another vessel making a sea voyage. This includes a "tanker" which is a type of ship in which the greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk and which is not, for the time being, carrying a cargo other than oil in that part of its cargo space.

(b) The following categories of vessels are excepted from all provisions of the regulations in this part:

(1) Tankers of under 150 gross tons, and other ships of under 500 gross tons.

(2) Ships for the time being engaged in the whaling industry when actually employed on whaling operations.

(3) Ships for the time being navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of St. Lambert lock at Montreal in the Province of Quebec, Canada.

(4) Naval ships and ships for the time being used as naval auxiliaries.

(c) Foreign vessels to which the convention applies, while in the territorial waters of the United States, may be boarded, examined and required to produce records as provided in section 11, of the Oil Pollution Act of 1961, as amended (33 U.S.C. 1010).

§ 151.10 Definitions.

(a) The terms defined in section 2 of the Act of August 2, 1961, as amended (33 U.S.C. 1001), shall have the same meaning when used in the regulations in this part, except as follows:

(1) The term "prohibited zones" means the zones described in 33 U.S.C. 1011 and § 151.30.

(2) The term "Secretary" means the Secretary of Transportation or any person to whom he has delegated his authority in the matter concerned.

(b) For convenience the following definitions are copied from 33 U.S.C. 1001:

(1) The term "convention" means the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended.

(2) The term "from the nearest land" means from the baseline from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958.

(c) The term "Commandant" means Commandant, U.S. Coast Guard, Department of Transportation, Washington, D.C. 20591.

§ 151.15 Oil Pollution Act of 1924, as amended.

(a) Nothing in the regulations of this part or in the Oil Pollution Act, 1961, as amended (33 U.S.C. 1001–1015), will be construed to change or modify the provisions of the Oil Pollution Act of 1924, as amended (secs. 1–8, 43 Stat. 605, 606, as amended; 33 U.S.C. 431–437).

§ 151.20 Inspections and enforcement.

(a) The Commandant hereby designates employees of the Corps of Engineers employed on river and harbor works, employees of any Corps of Engineers Harbor Supervisor, employees of the Bureau of Customs, and Commissioned, Warrant and Petty Officers of the U.S. Coast Guard to board vessels, to make inspections and require production of records, as required under the Oil Pollution Act of 1961, as amended (33 U.S.C. 1001–1015), and the regulations of this part.

(b) In enforcing the Oil Pollution Act of 1961, as amended, the officers and agents of the United States, designated in paragraph (a) of this section, shall have the power and authority and it shall be their duty to swear out process and to arrest and take into custody with or without process any person who may violate any of said provisions: *Provided*, That no person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials: *And provided further*, That whenever any arrest is made under the provisions of said section the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the United States.

§ 151.25 Boarding foreign vessels.

(a) Representatives of the Secretary of Transportation, the Bureau of Customs, and the U.S. Coast Guard may go on board, examine and require the production of records maintained on any foreign ship to which the convention applies while the ship is within the territorial jurisdiction of the United States as authorized by the Oil Pollution Act of 1961, as amended (33 U.S.C. 1010), and the regulations of this part.

§ 151.30 Prohibited zones.

(a) All sea areas within 50 miles from the nearest land shall be prohibited zones.

(b) The following sea areas, insofar as they extend more than 50 miles from the nearest land, shall also be prohibited zones:

(1) *Pacific Ocean—Canadian Western Zone.* The Canadian Western Zone shall extend for a distance of 100 miles from the nearest land along the west coast of Canada.

(2) *North Atlantic Ocean, North Sea, and Baltic Sea*—(i) *North-West Atlantic Zone.* The North-West Atlantic Zone shall comprise the sea areas within a line drawn from latitude 38°47′ N., longitude 73°43′ W., to latitude 39°58′ N., longitude 68°34′ W.; thence to latitude 42°05′ N., longitude 64°37′ W.; thence along the east coast of Canada at a distance of 100 miles from the nearest land.

(ii) *Icelandic Zone.* The Icelandic Zone shall extend for a distance of 100 miles from the nearest land along the coast of Iceland.

(iii) *Norwegian, North Sea, and Baltic Sea Zone.* The Norwegian, North Sea, and Baltic Sea Zone shall extend for a distance of 100 miles from the nearest land along the coast of Norway, and shall include the whole of the North Sea and of the Baltic Sea and its Gulfs.

(iv) *North-East Atlantic Zone.* The North-East Atlantic Zone shall include the sea areas within a line drawn between the following positions:

Latitude	*Longitude*
62° N.	2° E.;
64° N.	00°;
64° N.	10° W.;
60° N.	14° W.;
54°30′ N.	30° W.;
53° N.	40° W.;
44°20′ N.	40° W.;
44°20′ N.	30° W.;
46° N.	20° W.;

thence towards Cape Finisterre at the intersection of the 50-mile limit.

(3) *Mediterranean and Adriatic Seas—Mediterranean and Adriatic Zone.* The Mediterranean and Adriatic Zone shall comprise the sea areas within a distance of 100 miles from the nearest land bordering the Mediterranean and Adriatic Seas along the coasts of France, Greece, Jordan, Lebanon, Israel, United Arab Republic, and Maltese Islands.

(4) *Black Sea and Sea of Azov.* (Not in effect.)

(5) *Red Sea—Red Sea Zone.* The Red Sea Zone shall comprise the sea areas within a distance of 100 miles from the nearest land along the coasts of the United Arab Republic bordering the Red Sea.

(6) *Persian Gulf—Kuwait Zone.* The Kuwait Zone shall comprise the sea area within a distance of 100 miles from the nearest land along the coast of Kuwait.

(7) *Arabian Sea, Bay of Bengal, and Indian Ocean—Malagasy Zone.* The Malagasy Zone shall comprise the sea area within a distance of 100 miles from the nearest land along the coast of Madagascar west of the meridians of Cape d'Ambre in the north and of Cape Ste. Marie in the south and within a distance of 150 miles from the nearest land along the coast of Madagascar east of these meridians.

(8) *Australia—Australian Zone.* The Australian Zone shall comprise the sea area within a distance of 150 miles from the nearest land along the coasts of Australia, except off the north and west coasts of the Australian mainland between the point opposite Thursday Island and the point on the west coast at 20° S. latitude.

§ 151.35 Oil Record Book.

(a) An Oil Record Book printed by the U.S. Government is available without charge to the masters or operators of all vessels subject to the Oil Pollution Act of 1961, as amended (33 U.S.C. 1001–1015), through U.S. Coast Guard Marine Inspection Offices.

(b) The ownership of the Oil Record Book shall remain in the U.S. Government.

(c) On each occasion when any of the following operations take place in the vessel, entries shall be completed in the Oil Record Book:

(1) Ballasting of and discharge of ballast from cargo tanks of tankers.

(2) Cleaning of cargo tanks of tankers.

(3) Settling in slop tanks and discharge of water from tankers.

(4) Disposal from tankers of oily residues from slop tanks or other sources.

(5) Ballasting, or cleaning during voyage, of bunker fuel tanks of ships other than tankers.

(6) Disposal from ships other than tankers of oily residues from bunker fuel tanks or other sources.

(7) Accidental or other exceptional discharges or escapes of oil from tankers or ships other than tankers.

(d) On each occasion a descriptive statement shall be entered in the Oil Record Book of the circumstances of, and reasons for:

(1) The discharge of oil or oily mixture from a ship for the purpose of securing the safety of the ship, preventing damage to the ship or cargo, or saving of life at sea; or,

(2) The escape of oil, or of oily mixture, resulting from damage to the ship or unavoidable leakage; or,

(3) The discharge of residue arising from the purification or clarification of fuel oil or lubricating oil; or,

(4) The discharge of oil or oily mixture from a ship of 20,000 gross tons or over for which the building contract is placed on or after May 18, 1967, including a tanker.

(e) Each entry in the Oil Record Book shall be made and dated on the day when such actions occur. When any action or operation extends over a period of more than one day, the date of entry shall not be later than the date on which the action or operation is completed. Each page of the Book shall be signed by the officer or officers in charge of the operations concerned and, when the ship is manned, by the master of the ship.

(f) The master of every vessel required to keep the Oil Record Book shall be responsible for the maintenance of such record and its delivery as required by this section.

(g) Upon completion of a foreign voyage the Oil Record Book shall be delivered to the U.S. Coast Guard Marine Inspection Office in the port where the voyage is terminated.

(h) The Oil Record Book maintained on a vessel when not engaged on a foreign voyage shall remain on board such vessel for one or more voyages until insufficient space remains for an additional entry. When completed, the book shall be retained on board the vessel or at the principal office in the United States of the vessel's owner for a period of 2 years from the date of the last entry, or until surrendered to the U.S. Government. At the expiration of a 2-year period such a completed book may be destroyed.

§ 151.35 Penalties for violations.

(a) The provisions of subsection 9(f) of the Oil Pollution Act of 1961, as amended (33 U.S.C. 1008), read as follows:

If any person fails to comply with the requirements imposed by or under this section, he shall be liable on conviction to a fine not exceeding $1,000 nor less than $500 and if any person makes an entry in any records kept in accordance with this Act or regulations prescribed thereunder by the Secretary which is to his knowledge false or misleading in any material particular, he shall be liable on conviction to a fine not exceeding $1,000 nor less than $500 or imprisonment for a term not exceeding 6 months, or both.

Dated: October 12, 1967.

P. E. TRIMBLE,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 67-12305; Filed, Oct. 17, 1967; 8:47 a.m.]

Chapter II—Corps of Engineers, Department of the Army

PART 209—ADMINISTRATIVE PROCEDURE

Shipping Safety Fairways and Anchorage Areas, Gulf of Mexico

Pursuant to the provisions of section 10 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403) and section 4 of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462; 43 U.S.C. 1333(f)), § 209.135 establishing shipping safety fairways and anchorages in the Gulf of Mexico is hereby amended with respect to paragraph (d) (22) redesignating the limits of the Cat Island Pass Safety Fairway (formerly Caillou Pass Safety Fairway) effective upon publication in the FEDERAL REGISTER, as follows:

§ 209.135 Shipping safety fairways and anchorage areas, Gulf of Mexico.

* * * * *

(d) *The areas.* * * *

(22) *Cat Island Pass Safety Fairway.* The area between lines joining points at:

Latitude	*Longitude*
29°05'57"	90°34'32"
29°04'56"	90°35'09"
29°03'14"	90°35'10"
29°03'14"	90°35'17"
29°01'24"	90°34'55"

and lines joining points at:

Latitude	*Longitude*
29°06'00"	90°34'21"
29°05'31"	90°34'12"
29°03'13"	90°34'13"
29°03'13"	90°34'07"
29°01'34"	90°33'47"

* * * * *

[Regs., Oct. 2, 1967, ENGCW-ON] (Sec. 10, 30 Stat. 1151, and sec. 4, 67 Stat. 462; 33 U.S.C. 403, 43 U.S.C. 1333(f))

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 67-12269; Filed, Oct. 17, 1967; 8:45 a.m.]

PART 212—OIL POLLUTION REGULATIONS

Cancellation of Part

CROSS REFERENCE: For a document canceling Part 212, see F.R. Doc. 67-12305, Part 151 of this title, *supra.*

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission and Department of Transportation

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[No. 34859]

PART 124—UNIFORM SYSTEM OF ACCOUNTS FOR REFRIGERATOR CAR LINES

Miscellaneous Amendments

Order. At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 25th day of September 1967.

On August 11, 1967, notice of proposed rule making regarding proposed amendments of the Uniform System of Accounts for Refrigerator Car Lines, pertaining to the accounting treatment of extraordinary and prior period items in the determination of net income, was published in the FEDERAL REGISTER (32 F.R. 11644). After consideration of all such relevant matter as was submitted by interested persons, the amendments as so proposed are hereby adopted.

It is ordered, That the amendments to Part 124 as proposed are adopted without change.

It is further ordered, That these amendments are effective January 1, 1967.

And it is further ordered, That service of this order shall be made on all carriers which are affected hereby and notice thereto shall be given the general public by depositing a copy of this order in the Office of the Secretary of the Commission at Washington, D.C., and by filing the order with the Director, Office of the Federal Register.

(Secs. 12, 20, 34 Stat. 383, 386, as amended; 49 U.S.C. 12, 20)

By the Commission, Division 2.

[SEAL] H. NEIL GARSON,
Secretary.

I. *Instructions amended—Item No. 1.* Instruction "3 Classification of accounts" is amended by revising the first and second paragraphs to read as follows:

Accounts are prescribed to cover cost of property used in furnishing cars or protective service and for revenues, expenses, taxes and income from such service. Separate accounts are prescribed for investment in property not used in such services and for other investments and income therefrom; for extraordinary and prior period items, including applicable income taxes; and for assets, liabilities and capital includible in the balance sheet statement. Retained income accounts form the connecting link between the income account and the equity section of the balance sheet. They are provided to record the transfer of net income or loss for the year; certain capital transactions; and, when authorized by the Commission, other items.

All items of profit and loss recognized during the year are includible in ordinary income except nonrecurring items which in the aggregate for the same class are both material in relation to operating revenues and ordinary income for the year and are clearly not identified with or do not result from usual business operations of the year. Important items of the kind which occur from time to time and which, when material in amount, are to be excluded from ordinary income are those resulting from unusual sales of property and investment securities other than temporary cash investments, from company bonds reacquired, from change in application of accounting principles, and from prior period items (other than ordinary adjustments of a recurring nature). Material items are those which, unless excluded from ordinary income, would distort the accounts and impair the significance of ordinary income for the year. Items so excludible from ordinary income are to be entered directly in the income accounts provided for extraordinary and prior period items upon approval of the Commission.

Adjustments constituting items of a character typical of customary business activities or representing corrections or refinements resulting from the natural use of estimates inherent in the accounting process, shall not be considered extraordinary or prior period items regardless of size.

In determining materiality, items of a similar nature should be considered in the aggregate; dissimilar items should be considered individually. As a general standard, an item to qualify for inclusion as an extraordinary or prior period item shall exceed 1 percent of total op-

charges", or to account 570, "Extraordinary items", as appropriate.

* * * * *

Item No. 2. Instruction "8 Delayed items" is amended by revising the last sentence to read as follows:

* * * See instruction 3 for provisions covering delayed items of a nonrecurring nature.

Item No. 3. Instruction "37 Book value of securities owned" is amended by revising the second paragraph to read as follows:

* * * * *

The amount of the adjustment for the loss in value written off shall be charged to account 551, "Miscellaneous income charges", or to account 570, "Extraordinary items", as appropriate.

* * * * *

Item No. 4. Instruction "38 Discount, expense and premium on debt" is amended by revising the first sentence of the third paragraph to read as follows:

* * * * *

When any funded debt which has been actually issued to bona fide holders for value is reacquired by the accounting company, that proportion of the balance remaining in the accounts containing discount, expense and premium on funded debt for the subclass of the security reacquired applicable to the portion reacquired shall be credited or charged thereto, as may be appropriate, and concurrently charged or credited to account 519, "Miscellaneous income", account 551, "Miscellaneous income charges", or to account 570, "Extraordinary items", as may be appropriate, in accordance with the text of these accounts. * * *

II. *Texts of property accounts amended—Item No. 1. Account 51 Land.* The text of this account is amended by revising "Note C" to read as follows:

NOTE C: The net proceeds from the sale of minerals or timber, in excess of the amount contracted for in the purchase price shall be credited to account 519, "Miscellaneous income", or to account 570, "Extraordinary items", as appropriate.

III. *Texts of income accounts amended—Item No. 1. Account 519 Miscellaneous income.* The text of this account is amended by revising the "Note" to read as follows:

* * * * *

NOTE: When the profit from sale of investment securities (exclusive of temporary cash investments), from sale of land and other property, and from company bonds reacquired is of an amount sufficiently large to constitute an extraordinary item, such profit shall be credited to account 570 "Extraordinary items". (See instructions 3 and 18.)

Item No. 2. Account 532 Car line tax accruals. The text of this account is amended by revising the third paragraph to read as follows:

* * * * *

Accruals for Federal income taxes applicable to ordinary income shall be included in this account. See texts of account 590, "Federal income taxes on extraordinary and prior period items", account 606, "Other credits to retained income", and account 616, "Other debits to retained income", for recording other income tax consequences. Details pertaining to the tax consequences of other unusual and significant items, and also cases where tax consequences are disproportionate to related amounts included in income accounts, shall be submitted to the Commission for consideration and decision as to proper accounting. Federal incomes taxes which are refundable or reduced as the result of carry-back or carry-forward of operating loss shall be credited to this account, if a carry-back in the year in which the loss occurs or, if a carry-forward, in the year in which such loss is applied to reduce taxes. However, when the amount constitutes an extraordinary item pursuant to instruction 3, it shall be included in account 580, "Prior period items".

Item No. 3. Account 551 Miscellaneous income charges. The text of this account is amended by revising the "Note" to read as follows:

* * * * *

NOTE: When the loss on sale of investment securities (exclusive of temporary cash investments) from sale of land and other property, from write-down in ledger value of investment securities and from company bonds reacquired is of an amount sufficiently large to constitute an extraordinary item, such loss shall be included in account 570, "Extraordinary items". (See instructions 3 and 18.)

Item No. 4. The system of accounts, following the text of account 551, "Miscellaneous income charges", is amended by adding the following caption, account numbers, titles and texts:

EXTRAORDINARY AND PRIOR PERIOD ITEMS

Account 570 Extraordinary items (net). (a) This account shall include extraordinary items accounted for during the current accounting year in accordance with instruction 3, upon approval of the Commission. Among the items which shall be included in this account are:

Net gain or loss on sale of land used for transportation purposes, and of noncarrier property. (See instruction 18.)

Net gain or loss on sale of securities acquired for long-term investment purposes, and charges to write down the ledger value of such securities because of impairment of value.

Net gain or loss on reacquisition of company bonds.

Loss on sale or retirement of transportation property for which depreciation reserve has not been provided.

Change in application of accounting principles.

(b) Federal income tax consequences of charges and credits to this account shall be included in account 590, "Federal income taxes on extraordinary and prior period items".

(c) This account shall be maintained in a manner sufficient to identify the nature and gross amount of each debit and credit.

Account 580 Prior period items (net). (a) This account shall include unusual delayed items accounted for during the current accounting year in accordance with the text for instruction 3, upon approval of the Commission. Among the items which shall be included in this account are:

Unusual adjustment, refunds or assessments of income taxes of prior years.

Unusual adjustments of reserves of prior years determined to be excessive or deficient.

Similar items representing transactions of prior years which are not identifiable with or do not result from business operations of the current year.

(b) Federal income tax consequences of charges and credits to this account shall be included in account 590, "Federal income taxes on extraordinary and prior period items".

(c) This account shall be maintained in a manner sufficient to identify the nature and gross amount of each debit and credit.

Account 590 Federal income taxes on extraordinary and prior period items. This account shall include the estimated Federal income tax consequences (debit or credit) assignable to the aggregate of items of both taxable incomes and deductions from taxable income which, for accounting purposes, are classified as unusual and extraordinary, and are recorded in accounts 570, "Extraordinary items", and 580, "Prior period items", as appropriate.

IV. *Texts of retained income accounts deleted and amended—Item No. 1.* The following accounts in the section covering "Retained Income Accounts Texts" are deleted by cancelling the numbers, titles, texts thereof and notes thereto.

603 Profit from sale of property.
604 Profit from sale of investment securities.
605 Profit from company bonds reacquired.
613 Loss on sale or retirement of property.
614 Loss on sale of investment securities.
615 Loss on company bonds reacquired.
617 Federal income taxes assigned to retained income.

Item No. 2. Account 606 Other credits to retained income. This account is amended by revising the text as follows:

This account shall include other credit adjustments, net of assigned Federal income taxes, not provided for elsewhere in this system but only after such inclusion has been authorized by the Commission.

Item No. 3. Account 616 Other debits to retained income. This account is amended by revising the text as follows:

(a) This account shall include losses from resale of reacquired capital stock and charges which reduce or write off discount on capital stock issued by the company, but only to the extent that such charges exceed credit balances in capital surplus for shares reacquired. (See instruction 39.)

(b) This account shall also include other debit adjustments, net of assigned Federal income taxes, not provided for elsewhere in this system but only after such inclusion has been authorized by the Commission.

V. *Texts of balance sheet accounts amended—Item No. 1. Account 723 Reserve for adjustment of investment in securities—Cr.* This account is amended by revising the text as follows:

(a) This account shall include the total of the balances in such reserves as are maintained by the accounting company for the purpose of providing for reductions in the value of securities owned and recorded in accounts 721, "Investments in affiliated companies", or 722, "Other investments". Corresponding charges shall be made to account 551, "Miscellaneous income charges", or account 570, "Extraordinary items", as appropriate.

(b) If reserves are maintained in provision for anticipated losses in specific securities, when the related assets are written down or written off, or are sold or otherwise disposed of at a loss, the reduction in the book value or the losses sustained shall be charged to this account to the extent of the credit balance in the account applicable to the particular securities involved, and the remainder, if any, shall be charged to account 551, "Miscellaneous income charges", or to account 570, "Extraordinary items", as appropriate. In case a general reserve for losses in unspecified security values is maintained, all such losses resulting from write-downs, write-offs, etc., shall be charged to this account to the extent of the total credit balance in the account, and the remainder, if any, shall be charged to account 551, "Miscellaneous income charges", or to account 570, "Extraordinary items", as appropriate.

VI. *Form of income statement amended.* 560 Form of Income Statement is amended by making the following changes:

Item No. 1. The caption number is changed from 560 to 599.

Item No. 2. Directly above the caption, I. Car Line Operating Income, the following caption is added:

ORDINARY ITEMS

Item No. 3. The line item, Net Income (or loss), is deleted and the following are added:

Ordinary income (or loss) _____ _____

EXTRAORDINARY AND PRIOR PERIOD ITEMS

570 Extraordinary items (net).
580 Prior period items (net).
590 Federal income taxes on extraordinary and prior period items _____ _____
Total extraordinary and prior period items _____ _____
Net income (or loss) _____ $_____

VII. *Miscellaneous amendments—Item No. 1.* The list of Income Accounts Texts is amended by making the following changes:

a. The following caption is added directly below Income Accounts Texts:

ORDINARY ITEMS

b. Directly below 551 Miscellaneous income charges, add the following caption, account numbers and titles:

EXTRAORDINARY AND PRIOR PERIOD ITEMS

570 Extraordinary items (net).
580 Prior period items (net).
590 Federal income taxes on extraordinary and prior period items.

c. The number of 560 Form of income statement is changed to 599.

Item No. 2. The list of Retained Income Accounts Texts is amended by deleting the following account numbers and titles:

603 Profit from sale of property.
604 Profit from sale of investment securities.
605 Profit from company bonds reacquired.
613 Loss on sale or retirement of property.
614 Loss on sale of investment securities.
615 Loss on company bonds reacquired.
617 Federal income taxes assigned to retained income.

Item No. 3. In the system of accounts, following the text of account 469, "Other expenses", directly below Income Accounts Texts, the following caption is added:

ORDINARY ITEMS

[F.R. Doc. 67-12308; Filed, Oct. 17, 1967; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Bosque Del Apache National Wildlife Refuge, N. Mex.; Correction

In F.R. Doc. 67-11813, appearing on page 13931 of the issue for Friday, October 6, 1967, the goose season in the first paragraph should read as follows:

"* * * is permitted from November 18 through December 30, 1967, inclusive, * * *".

WILLIAM T. KRUMMES,
Regional Director, Albuquerque, N. Mex.

OCTOBER 11, 1967.

[F.R. Doc. 67-12286; Filed, Oct. 17, 1967; 8:46 a.m.]

PART 32—HUNTING

Certain Wildlife Refuges in Oregon

The following regulations are issued and are effective on date of publication in the FEDERAL REGISTER. These regulations apply to public hunting on National Wildlife Refuges in Oregon.

General conditions. Hunting shall be in accordance with applicable State regulations. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps—special conditions applying to individual refuges are listed on the reverse side of the refuge hunting map. Maps are available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 730 Northeast Pacific Street, Portland, Oreg. 97208.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Upland game may be hunted on the following refuges:

Cold Springs National Wildlife Refuge, Hermiston, Oreg. (Headquarters at McNary National Wildlife Refuge, Post Office Box 19, Burbank, Wash. 99323).

Special conditions. Hunting will be permitted only on Sundays, Wednesdays, and Saturdays.

McKay Creek National Wildlife Refuge, Pendleton, Oreg. (Headquarters at McNary National Wildlife Refuge, Post Office Box 19, Burbank, Wash. 99323).

Special conditions. Hunting will be permitted only on Sundays, Wednesdays, and Saturdays.

Malheur National Wildlife Refuge, Post Office Box 113, Burns, Oreg. 97720.

Special conditions. (1) Hunting will be restricted to pheasants, quail and partridge;

(2) Hunting on the P-Ranch Unit will be permitted Saturdays, Sundays, and Mondays during the period October 21 through November 6, 1967.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 17, 1968.

JOHN D. FINDLAY,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

OCTOBER 10, 1967.

[F.R. Doc. 67-12325; Filed, Oct. 17, 1967; 8:49 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 18]

TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Proposed Use of Warning Labels

The Bureau of Customs has tentatively concluded that the requirement for showing the transportation entry number, port of origin, port of destination, and place where delivery to Customs is to be made on warning labels affixed to packages transported in bond need no longer be continued for customs purposes. It has also tentatively concluded that the inclusion of that information on the present warning label may serve the interests of some bonded carriers.

Accordingly, it is proposed to amend the warning label form set out in the first sentence of § 18.4(e) of the Customs Regulations to read as follows:

U.S. CUSTOMS

This package is under bond and must be delivered intact to the customs officer in charge at the port of destination.

WARNING

Two years' imprisonment, $5,000 fine, or both, is the penalty for unlawful removal of this package or any of its contents.

It is further proposed to provide for the inclusion at the option of the carrier of the information now required to be shown on the label. Of course, the carrier's responsibility for accounting for and properly delivering bonded packages will not be lessened or affected by reason of the omission of the information now required on warning labels. Any carrier which has cause to believe that the information is necessary for its record-keeping purposes should see that the information is included on the labels.

Before issuance of the proposed amendment, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington, D.C. 20226, and received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: October 11, 1967.

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

[F.R. Doc. 67-12327; Filed, Oct. 17, 1967; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

TRIBAL AND TRUST PATENT INDIAN LANDS OF SAN CARLOS PROJECT, ARIZONA

Proposed Basic Charge

Pursuant to section 4(a) of the Administrative Procedure Act of June 11, 1946 (80 Stat. 238) and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs, September 14, 1946 (11 F.R. 10297), and by virtue of authority delegated by the Commissioner of Indian Affairs to the area directors, by Order 551, section 200 (14 IAM 3.1), notice is hereby given of intention to modify § 221.110 *Basic charge,* of Title 25, Code of Federal Regulations, dealing with irrigation operation and maintenance assessments against tribal lands and trust patent Indian lands of the San Carlos Irrigation Project, Arizona, by increasing the annual basic assessment rate for the calendar year 1968 and subsequent years, unless changed by further order, from $5.70 to $7.20 per acre. The revised section will read as follows:

§ 221.110 Basic charge.

Pursuant to the provisions of section 10 of the Act of March 3, 1905 (33 Stat. 1081), as amended and supplemented by the Acts of August 24, 1912 (37 Stat. 522), August 1, 1914 (38 Stat. 583, 25 U.S.C. 385), section 5 of the Act of June 7, 1924 (43 Stat. 476), March 7, 1928 (45 Stat. 210, Title 25 U.S.C. 387), and the Act of August 9, 1937 (50 Stat. 577), as amended by the Act of May 9, 1938 (52 Stat. 291-305), and in accordance with the public notice issued on December 1, 1932, operation and maintenance charges are assessable against the 50,000 acres of tribal lands and trust patent Indian lands of the San Carlos Indian Irrigation Project within the boundaries of the Gila River Indian Reservation, Ariz., and the basic rate assessed for the calendar year 1968 and the subsequent years unless changed by further order, is hereby fixed at $7.20. Such rate shall entitle each acre of land to have delivered for use thereon two (2) acre-feet of water per acre or its proportionate share of the available water supply. The assessment for the 50,000 acres of Indian land will be payable as provided in §§ 221.111 to 221.116, inclusive.

The foregoing change is to become effective for the calendar year 1968 and continue thereafter until further notice.

It is the policy of the Department of the Interior whenever practicable to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections, with respect to the proposed amendment, to W. Wade Head, Area Director, Phoenix Area Office, Post Office Box 7007, Phoenix, Ariz., within 30 days from date of publication of this notice of intention in the daily issue of the FEDERAL REGISTER.

W. WADE HEAD,
Area Director.

[F.R. Doc. 67-12787; Filed, Oct. 17, 1967; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 984]

HANDLING OF WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

Proposed Control Percentages for 1967-68 Crop Year

Notice is hereby given of a proposal to establish, for the 1967-68 crop year, which began August 1, 1967, walnut control percentages as follows: District 1 (California), marketable percentage of 93 percent and surplus percentage of 7 percent; and District 2 (Oregon and Washington), marketable percentage of 96.5 percent and surplus percentage of 3.5 percent. The control percentages would be established in accordance with the provisions of the marketing agreement, as amended, and Order No. 984, as amended (7 CFR Part 984), regulating the handling of walnuts grown in California, Oregon, and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal was unanimously recommended by the Walnut Control Board.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than eight days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during official hours of business (7 CFR 1.27(b)).

The 1967 orchard-run production is estimated at 154 million pounds. The proposed percentages would provide for (1), trade demand for inshell walnuts of 50 million pounds plus a yearend carryover of 10 million pounds, and (2) trade

demand for shelled walnuts of 45 million pounds (kernel weight) plus a yearend carryover of 8 million pounds for the marketing year which began August 1, 1967. The trade demand area includes the United States, Puerto Rico, and the Canal Zone.

The proposal is as follows:

§ 984.215 Marketable and surplus percentages for walnuts during the 1967–68 marketing year.

The marketable and surplus percentages during the marketing year beginning August 1, 1967, shall be as follows:

	District 1	District 2
Marketable	93	96.5
Surplus	7	3.5

Dated: October 12, 1967.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 67-12302; Filed, Oct. 17, 1967; 8:47 a.m.]

[7 CFR Part 989]

[Docket No. AO 198-A6]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Amendment of Marketing Agreement, as Amended, and Order, as Amended

Pursuant to the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk, U.S. Department of Agriculture, of this recommended decision with respect to the proposed further amendment of the marketing agreement, as amended and Order No. 989, as amended (7 CFR Part 989; 32 F.R. 12157, 12555, 12710), regulating the handling of raisins produced from grapes grown in California (hereinafter collectively referred to as the "order"). The order is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), hereinafter referred to as the "act", and any amendment which may result from this proceeding also will be effective pursuant to the act.

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the close of business on November 17, 1967. Exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The public hearing on the record of which this proposed amendment is formulated was held in Fresno, Calif., on April 24–27, 1967. Notice of the hearing was published in the FEDERAL REGISTER on April 7, 1967 (32 F.R. 5690). The proposals in the notice of hearing pertaining to this recommended decision were submitted by the Raisin Administrative Committee (hereinafter referred to as the "committee"), the agency established pursuant to the order to administer the terms and provisions thereof.

Material issues. The material issues presented on the record of hearing involving this amendatory action relate to:

(1) The need and authority for allotment of the quantity of raisins which handlers may purchase from or handle on behalf of producers;

(2) The method for allotting the quantity of raisins which handlers may purchase from or handle on behalf of producers, including changes in marketing policy requirements;

(3) Provisions relating to transfer of producers' base allotments;

(4) Provisions relating to control and disposition of surplus raisins;

(5) The making of such changes in the order as are necessary to bring the entire order as proposed to be amended, into conformity with the amendatory action resulting from the hearing.

These issues are an elaboration of issue (16) of the recommended decision of June 22, 1967 (32 F.R. 9084) which contained findings and conclusions on the other issues presented on the record of the aforesaid public hearing.

Findings and conclusions. The findings and conclusions on these further material issues, all of which are based on the evidence adduced at the hearing and the record thereof, are as follows:

(1) Since the inception of the order in 1949, volume regulation has consisted of permitting handlers to acquire the entire production of raisins and then allotting by market outlets any varietal type. This was largely by designating for the natural Thompson Seedless varietal type a free percentage, for disposition primarily in domestic outlets, and the percentage to be pooled, for the account of the committee, and disposed of primarily in export. However, the evidence of record is to the effect that means in addition to this should be available for use in effectuating the declared policy of the act. An upward trend in production, caused by increasing bearing acreage and greater yields per acre, has resulted in excessive quantities of grapes entering the raisin outlet. Consumption in this outlet, however, is not readily expandable and in the 1965 season, despite inclusion of raisins in the surplus removal efforts of the U.S. Department of Agriculture, a substantial tonnage had to be disposed of to vintners, for high proof alcohol, at well below the costs of raisin production. Returns to producers would have been greater if the surplus had been delivered to vintners in the form of fresh grapes.

In the 10 years since the 1956 low point, the bearing acreage of California raisin variety grapes has increased from 202,806 acres to 255,000 acres in 1966. From such acreage, producers delivered to packers a low of 163,000 sweatbox tons of raisins in 1957 and a record for the period of 278,000 sweatbox tons in 1966. Commercial shipments did not show a similar response in that annual movement, domestic and export, was about 200,000 sweatbox tons in the beginning of the period and only 215,000 sweatbox tons for the 1965–66 crop year of ample supplies. In consequence, excessive carryovers have developed in the hands of raisin packers and the Raisin Administrative Committee of the order. In turn, this has caused lower average returns to producers than the returns prevailing when raisin production and disappearance are in balance.

The entry of excessive quantities of grapes into the raisin outlet would tend to be controlled by allotting to handlers the quantity which each may purchase from or handle on behalf of producers. Such an allotment would tend to allocate raisin variety grapes as between raisin and other outlets and prevent reoccurrence of the 1965 situation. Hence, the raisin industry should benefit by having authority, to use producer allotments, pursuant to section 8c(6)(B) of the act (7 U.S.C. 608c(6)(B)), and the industry should have opportunity to adopt appropriate provisions.

In any such provisions producers should not be precluded from shipping their raisin variety grapes into fresh shipping, crushing, or canning outlets. Moreover, producer allotments should only need to remain in effect in those years when raisin supplies, in the absence of allotments, would exceed the marketable quantity. In other years, the producer allotments could be suspended to assure full delivery of all raisins.

Concern was expressed at the hearing that application of the provisions of section 8c(6)(B) of the act to the California raisin industry would encourage a larger raisin production in foreign countries and possibly take over a portion of the industry's current export market. However, the amendatory action recommended herein should not permit reduction of supplies below trade demand requirements nor cause, in view of liberal supplies, undue enhancement of price. The basic objective should be to maximize sales and hence farm income while so managing supply that any surplus can be effectively and readily controlled before it becomes a price depressing factor on the market. Thus, the indicated consequences about which concern was expressed should not materialize as a result of producer allotments under the act.

Concern was also expressed at the hearing that producer allotments would constitute acreage control and thus place raisin producers in a position, similar to cotton, where they could not expand their raisin grape acreage. However, the

basic effect of producer allotments would be to institute poundage allotments for raisins and establish producer eligibility for such allotments. Such a plan does not deal with production or acreage controls as such nor control the source of raisins, namely, the acreage of raisin variety grapes. The act specifically provides for limiting the quantity of a commodity (in this case, raisins) which handlers may purchase from or handle on behalf of producers on the basis of quantities which producers sold in a representative period. This authorization is the basis of the recommended amendatory action and provision is made to cause raisins in excess of the allotted quantity to be surplus and to be disposed of by the committee or the producer in nonnormal outlets.

(2) In view of the recomendation with respect to material issue (1), § 989.54 *Marketing Policy*, should be revised so as to adapt it to an allotment program while retaining the necessary present requirements as to estimates and recommendations. Thus, § 989.54 should be revised by adding a new paragraph (a) and redesignating present paragraphs (a), (b), (c), (d), and (e) as (b), (c), (d), (e), and (f) respectively. New paragraph (a) should provide that as soon as practicable after February 1, but no later than June 15, the committee shall prepare and submit to the Secretary a report setting forth at least its recommended producer allotment marketing policy for the ensuing crop year. This should cover at least eight factors as hereinafter discussed pertinent to such a policy for any varietal type. Other listed estimates and recommendations should be included when pertinent to establishment or modification of additional regulatory actions. If these are not included in the pre-June 16 meeting, they should be covered in the early October meeting on the preliminary free tonnage percentage.

Although there was evidence that the marketing policy should be adopted no later than July 15, to obtain late information as to probable carryover stocks and trade demand, it is improbable that so late a date would permit transmission of the report to the Secretary, issuance of a notice of rule making, permit a period for exceptions, issuance of a final rule and then the transmission of several thousand annual allotments to producers and handlers, prior to the producers' early August decisions as to which acres will be prepared for the sun-drying of raisins. Hence, the final date should be at least a month earlier than July 15.

The factors to be included in the marketing policy report of the committee to the Secretary should be included in new paragraph (a) and deleted in redesignated paragraph (c). The wording of factor (1) should be changed to more specifically state the items pertinent to the allotment determination and by deleting the need to consider tonnage held by producers as such tends to be negligible as of the end of the crop year. Hence, it should read: "The likely carryover of free and reserve tonnage as of September 1." Thus, it would include that held by handlers as free tonnage and that held as reserve tonnage for the account of the committee, at the beginning of the crop year.

Factor (2) should be revised by deleting the requirement as to expected general quality as this may not be determinable in view of the earlier time of the marketing policy meeting. No change should be made in the rest of the factor but it should be incorporated in new factor (9). Similarly, factor (3) should be retained by incorporation in new factor (9) as a further quality issue pertinent to actions implementing the allotment recommendation.

Factor (4) should be retained as factor (2) but to be more consistent with the needs of the allotment determination should be restated as: "The prospective crop year trade demand in free tonnage outlets and the desirable free tonnage." This should be followed by factor (6) redesignated as (3) and reworded, as in the case of factor (4), as follows: "The prospective crop year trade demand in reserve tonnage outlets, other than as free tonnage, considering the estimated world raisin supply and demand situation." Also, factor (5) should be redesignated (4) and restated as: "The desirable carryout of free and reserve raisins at the end of the ensuing crop year." For purposes of the allotment percentage determinations, both desirable carryout tonnages will need to be determined.

A new factor (5), should be the salable quantity computed and adjusted so as to provide the basis for determining the allotment percentage to be applied to each producer's allotment base pursuant to new § 989.63(c). This would be the sum of the two demand estimates, factors (2) plus (3), plus any desirable adjustment in the carryover situation such as none if the carryin and desirable carryout are the same, a plus amount if the latter is significantly greater than the carryin and a minus amount if the latter is significantly less than the carryin. However, for any crop year, the salable quantity may need to be adjusted upward because the committee, pursuant to § 989.63(c) as hereinafter recommended, is required to reduce annual allotments of producers unable to fill them due to reduced, or immature, productive capacity devoted to raisins. The adjusted salable quantity divided by the total of allotment bases should result in an allotment percentage which will permit delivery to packers of the desired salable quantity to meet trade demand and make desirable carryover adjustments.

The reports should contain, as a new factor (6), the recommended allotment percentage for the ensuing crop year, computed by dividing the salable quantity by the total of all producer allotment bases established pursuant to § 989.63. It is visualized that the allotment percentage would be computed as follows: If the salable quantity for Thompson Seedless variety, in a given year, is 210,000 tons and this were divided by the total of Thompson Seedless allotment bases (assumed for purposes of illustration) of 280,000 tons, the allotment percentage would be 75 percent. However, if the 280,000 tons of total bases consisted of 240,000 tons applicable to mature vineyards and with intent to fully produce and deliver their annual allotment and from the other 40,000 tons only 50 percent of allotment delivery could be expected, the result would be delivery of 0.75 times 240,000 tons, or 180,000 tons, and 0.75 times 40,000 times one-half, or 15,000 tons, for a total of 195,000 tons or 15,000 tons short of the 210,000 ton goal. This is largely corrected by first adding the anticipated deficit to the 210,000 tons. Thus, 210,000 plus 15,000 equals 225,000 tons and dividing this by 280,000 equals about 80 percent. Then, 0.80 times 240,000 tons equals 192,000 tons and 0.80 times 40,000 tons times one-half equals 16,000 tons for a total of 208,000 tons. Since this does not fully correct to the salable quantity, it is obvious that some liberality should be used in its initial computation.

No substantive changes should be made in present factors (7), (8), and (10) and they should be retained as now designated. However, factor (7) should be more specifically worded, as follows: "Current raisin prices being received and the probable general level of raisin prices to producers and handlers in the ensuing crop year."

A new factor (9), combining present factor (9) with retain portions of present (2) and (3) and the addition of free and reserve percentages (as such can be based on the salable quantity determined at the pre-June 16 meeting) should be included either in the committee's first marketing policy report or, if not then included, in its early October report. Present factor (10) should be retained unchanged. Thus, the committee would be required to duly consider the several aspects of marketing policy annually and have authority to include such matters as it should bring to the attention of the Secretary.

Present paragraph (a) of § 989.54, redesignated (b), should be revised by deleting the first sentence because its requirement will be fulfilled at the committee's pre-June 16 meeting.

The first sentence of present paragraph (b) of § 989.54, redesignated (c), should be revised to provide that either as part of its pre-June 16 marketing policy or, as presently stated, on or before October 5 of each crop year (except that this date may be extended by the committee not more than 5 days if warranted by a late crop) the committee shall recommend to the Secretary a preliminary free tonnage percentage which will release not less than 65 percent of the desirable free tonnage established for any varietal type. This is to recognize that when allotments determine the raisin supply it is not necessary to wait until an October crop estimate is available to determine and recommend a preliminary free tonnage percentage. Also, the fifth sentence of the paragraph should be revised, as the factors to which it refers are transferred to new paragraph (a) of the section, and it should

refer to any factors pertinent to the recommendation and not included in prior marketing policy reports for the crop year.

Section 989.55 should be revised, by adding two introductory sentences, to provide that if the Secretary finds from the recommendations and supporting information of the committee, or from other information, that limiting the quantity of raisins of any varietal type which handlers may purchase from or handle on behalf of producers would tend to effectuate the declared policy of the act, he shall determine the salable quantity of such raisins and establish the allotment percentage on the ensuing crop to be applied to each producer's allotment base on such raisins. The percentage should be determined by dividing the salable quantity by the total of all allotment bases. The balance of the section should be retained with only conforming changes of language. These additions to the section are necessary to add the allotment feature to the regulatory actions of the Secretary and so cause it to be made effective for a particular crop.

A new § 989.56, entitled "Prohibition", should be added to provide that whenever an allotment percentage has been established by the Secretary and is in effect for a varietal type of any crop, no handler other than a processor shall acquire such raisins, except as provided in § 989.68, in excess of a producer's annual allotment as determined by the committee pursuant to § 989.63(c) nor acquire any varietal type from a producer without an allotment base. This is to clearly set forth the import of the regulatory action and provide the basis for compliance. The prohibition should apply to handlers of raisins but need not apply to a processor, such as a distiller, who uses raisins within the area in the production of a product other than raisins. Distillation has long been, and should continue to be, a non-normal outlet for the disposition of surplus raisins or raisins other than standard raisins. For some varietal types, no volume regulation has been imposed under the order and, in the absence of increasing production, none may be found necessary on these types in the foreseeable future. However, to avoid contributing to an upward surge in their production, handlers other than processors should be prohibited from acquiring raisins from a producer without an allotment base or with respect to a varietal type for which no allotment percentage is in effect from acreage in excess of that for which the allotment base was established. If producers with an allotment base increase acreage and production of a nonrestricted varietal type and cause a decline in the normal sales of a varietal type regulated by an allotment percentage, the committee should move to cause the offending varietal type to be subject to an allotment percentage. This would be essential to preserve sales opportunity consistent with the representative period and the demand for a given varietal type.

A new § 989.63 entitled "Allotment of salable quantity" should be added to provide for establishing allotment bases for producers of raisins and the issuance of annual allotments. The section should restrict eligibility for an allotment base, primarily, to a producer of 1966 crop raisins. His allotment base should be the higher of: (a) His sales of 1966 crop raisins; or (b) if his 1965 and 1966 raisin sales were from the same land, his sales per acre of the 1965 crop raisins multiplied by his 1966 acreage used for the same varietal type of raisins; 1966 was the year in which the largest number of tons of all varieties of raisins were delivered by producers of any recent year and apparently includes the largest total number of both old and new producers of raisins. Hence, by using the year of 1966 as the basis of eligibility, there should be due opportunity for raisin producers, in general, to qualify for allotment bases. However, raisin production from a given vineyard varies from year to year regardless of farming practices. Therefore, if a producer's sales per acre in 1965 was higher than his 1966 sales per acre for the varietal type, and was produced from the same lands from which his 1966 raisins were produced, he should be allowed to use his 1965 sales per acre multiplied by his 1966 acreage for determination of his allotment base. Thus, producers generally would have an allotment base determined by applying their best of 2 year's sales per acre to their 1966 acreage and the period of such sales, August 1, 1965, through August 31, 1967, is deemed to be a representative period for the producer allotment program. If for any reason, whether by change of ownership, lease, or otherwise, the producer produced raisins from different acreage in 1965 than in 1966, the sales per acre comparison cannot be made and hence such producer should be limited to his 1966 sales.

The evidence of record is that despite the foregoing there will be individual producers with no appropriate sales history due to at least one of the following reasons: (1) He planted new acreage on or after January 1, 1964, and prior to April 7, 1967, of a variety in which he can show raisin production in 1966; (2) he planted either Zante Currant or Monukka grapes on or after January 1, 1964, and prior to April 7, 1967; (3) he acquired a raisin producing vineyard prior to April 7, 1967, on which the raisin production was below industry average and establishes to the satisfaction of the committee a commitment to improve the raisin sales per acre; or (4) severe adverse weather or incapacitating personal hardship sharply reduced or eliminated his raisin production in 1966. Within limitations, these circumstances should be recognized in establishing allotment bases.

In regard to the first item, a producer with raisin sales in 1966 and with immature acreage (i.e., who planted new acreage on or after Jan. 1, 1964, or with new plantings prior to the publication of the notice of hearing on the allotment plan, Apr. 7, 1967), of a varietal type other than Zante Currants or Monukka grapes, should be entitled to an allotment base which includes such new acreage as can be construed as raisin production acreage. This should not include plantings prior to 1964 as such plantings would have matured enough to have substantial yields by 1966. There is involved in the immature acreage situation the issue of whether the investment in new plantings was with the intent to make raisins or to sell fresh grapes to the table, crushing or canning outlets. The evidence of record is that this should be resolved in the raisin producer's favor to the extent of permitting his total allotment base to reflect such new acreage as will not result in an increase exceeding 100 percent of the allotment base referable to 1966 nor cause his ratio of raisin production to total grape production to exceed that of 1966 or, if he also had raisin production in one or both of the 2 prior years, such average ratio for 1964, 1965, and 1966. However, since this necessitates computing production on the immature acreage, because it may not be known as of the time allotment bases are established, this can be stated more appropriately in terms of the applicable new acreage multiplied by the sales per acre in the portion of the allotment base computed for his mature acreage or if all his raisin production acreage was immature in 1966, by the lower of the 1966 industry-wide average sales per acre or the committee's determination of the probable sales per acre when mature. Thus, an established raisin producer would be granted a measure of additional access to the raisin outlet, but such would not exceed 100 percent of the allotment base determined for the mature acreage harvested in 1966 nor, through the limitation of the industry-wide average, exceed the sales per acre of the average raisin producer.

For like reasons a producer with immature Zante Currant or Monukka grape acreage in 1966 (i.e., who planted new acreage on or after Jan. 1, 1964, or with new plantings prior to the publication of the notice of hearing, Apr. 7, 1967) should be entitled to an allotment base which includes such new acreage multiplied by the producer's 1966 sales per acre of the like varietal type from his mature acreage or, if none, by the lower of the 1966 industry-wide average sales per acre of the like varietal type or the committee's determination of the probable sales per acre when mature. These two varieties are used almost wholly for raisins and this provision is necessary to avoid denying the producers access to the raisin outlet for this production. However, this should apply only if the vines were planted prior to the producer being placed on notice as to producer allotments on raisins. The inclusion of subsequent plantings, unless pursuant to new § 989.63(b), could jeopardize the effectiveness of the allotment program. In view of new § 989.56 restricting handler acquisitions to producers with a raisin allotment base and the likelihood that allotment percentages will not be established for these varietal types, it is expected that, from producers with an allotment base, handlers will be permitted,

in the foreseeable future, to acquire their entire productions of these two varietal types from the acreage for which the allotment base was established.

A further investment situation involves acquisition of an established raisin grape vineyard with low sales per acre and expenditures in its improvement (soil, vines, equipment, cultural practices) indicating a commitment to significantly increase the sales per acre. This should be recognized, also, as meriting an upward adjustment in the allotment base if it rests on 1965 and 1966 raisin sales per acre which are below the 1966 industry-wide average for the varietal type and the vineyard was acquired prior to April 7, 1967, but on or after November 1, 1964. Earlier acquisitions (meaning that 1966 crop would have been at least the third crop harvested after acquisition) should have been improved enough by 1966 to not warrant adjustments. Where the poor yielding vineyard has been acquired after harvest in 1964 and the producer establishes to the satisfaction of the committee a commitment to improve its sales per acre, the allotment base should be determined as the producer's raisin producing acres in 1966 multiplied by the 1966 industry-wide average sales per acre or, if higher, by the committee's determination of the probable sales per acre for such producer's raisin acreage in the third year after acquisition. There was testimony to the effect that the lower of these two factors should be used. However, other testimony clearly established that the nature of these commitments was to attain sales per acre exceeding the industry average and to so limit the adjustment would be to render it meaningless. Since those producers acquiring prior to November 1, 1964, would tend to have had at least 3 years to improve their sales per acre, those acquiring subsequent thereto should similarly be restricted to the sales to be expected in the third year after acquisition, as determined by the committee, so as to maintain the adjustment within reasonable limits and avoid undue inflation of the total of all allotment bases.

Where severe adverse weather or incapacitating personal hardship is established to the satisfaction of the committee as the primary factor causing a sharply reduced level of sales in 1965 and 1966, or failure to produce any raisins in 1966, an allotment base should be permitted and should be computed as the highest acreage of the vineyard used for raisins in the 1964–66 period, but not in excess of the producer's total 1966 acreage for the varietal type, multiplied by the lower of the 1966 industry-wide average sales per acre of the varietal type or the producer's highest prior raisin sales per acre in the 1964–66 period, as determined by the committee. However, since this category of persons includes some who prior to the notice of an allotment program had discontinued raisin production, as being too strenuous for their age or for other reason, no allotment base should be assigned to a person failing to produce raisins in 1966 unless the committee finds that he is continuing as a raisin producer and as evidence makes a bona fide effort to produce his applicable annual allotment in the first crop year after the effective date of this section. Failing to do so, his eligibility for an allotment should be cancelled as there would now be additional evidence that he is not a raisin producer. The basic reason for this cancellation is that the program is to provide a method for allotting to producers of raisins the amount of commodity to be handled. It is not to grant allotment bases to persons who are no longer producers and who seek a base with intent to sell it in lieu of delivering raisins thereunder.

All of the varietal types presently defined in § 989.10 of the order should be subject to the allotment program as each contributes to the overall industry surplus which adversely affects the average producer returns on raisins. Exemption of any could, over a period of time, result in an increase of their production which would jeopardize the program benefits to the regulated types. However, for the purposes of allotment, those varietal types designated as natural (sun-dried) Thompson Seedless, Golden Seedless, Sulphur Bleached and Soda Dipped come from a common grape, the Thompson Seedless, and should be combined into the "Thompson Seedless Raisin" varietal type. The natural (sun-dried) Muscat, Layer Muscat, and Valencia also come from a common grape, the Muscat, and should be combined into the "Muscat Raisin" varietal type. It is essential that the annual allotments be determined in terms of all forms of the raisin of a given grape variety to preserve the flexibility of producers and handlers to shift, from year to year, to different forms of raisins depending upon suitability of the grapes of a crop. Thus, a producer's allotment base may rest on sales of sun-dried Thompson Seedless raisins in 1966 but in a later year his grapes may have the characteristics desired for commercial dehydration into Golden Seedles raisins and should be permitted to be so acquired and used. To implement this, the committee, with the approval of the Secretary, should establish such conversion factors of fresh tons to dry tons as will permit allotment bases and annual allotments on raisins to be administered where appropriate as fresh tons of grapes.

In accordance with the criteria of paragraph (a) of new § 989.63 and based on reports of handlers, producer certifications and other information, the committee should establish and assign to each producer his allotment base. However, no base or adjusted base should be assigned to a person no longer a producer nor pursuant to § 989.63(a)(2)(iv) unless he produces the applicable annual allotment of raisins in the first crop year after the effective date of this section and failing to do so, his eligibility should be canceled. This was discussed in connection with subdivision (iv). The eligibility of any producer, or his legal successor in interest, to receive or retain an allotment base, should be dependent upon his continuing to make a bona fide effort to produce his annual allotment and failing to do so in any year, the applicable base quantity should be reduced by a percentage equivalent to the unproduced portion of the allotment. However, to avoid possible inequities, arising from acts of God or other excusable situations, the committee, with the approval of the Secretary, should have authority to waive this requirement for good cause. Moreover, 5 consecutive years of reduced or no production should be permitted to replant existing acreage or change to new acreage as this involves land preparation, plantings, and 3 or more years to the production of a harvestable crop. Administration of this whole area of assignment and retention of allotment bases should be in accordance with such rules and procedures as the committee may prescribe, with approval of the Secretary.

In the interest of a sound, workable program and one that can meet the needs of future supply and demand situations for raisins, new § 989.63 should also provide that each year the committee shall consider the need for granting, and if appropriate grant, with the approval of the Secretary, additional allotment bases, to either new producers or existing producers, or both, for such purposes as satisfying the demand for one or more varietal types, or adjusting the total of all allotment bases to the trade demand. Since this will involve problems in determination and assignment, the committee should prescribe, with the approval of the Secretary, such rules and regulations as are necessary to administer the provision.

New § 989.63 should also provide for the committee to issue, as early as possible in each calendar year, to each eligible producer, for the ensuing crop, an annual allotment determined by applying the allotment percentage established pursuant to § 989.55 to the producer's allotment base. This will be the quantity of raisins of that varietal type which a handler may acquire from that producer as salable raisins. This should be known to the producer as early as possible, subject to the marketing policy problem of determining the allotment percentage, so the producer can plan usage of his raisin variety grape acreage. However, the issuance to each producer of an annual allotment should be conditioned upon his qualifying for it by filing with the committee a form, developed and furnished by the committee, wherein the producer states such things as where he intends to produce his annual allotment, his raisin variety grape acreage, the acreage he intends to harvest for raisins, changes of location, if any, and such other information as is necessary for administration of the allotment program. Where a producer indicates that his acreage, or that which he intends to harvest for raisins, will be insufficient to produce his computed annual allotment, the committee should make an appropriate reduction in the allotment it issues. Again, the annual

allotment is for a given producer to deliver raisins. If he is reworking his vineyard, has a canning contract or other reason to not produce raisins to fill his raisin allotment, it should be reduced accordingly. No handler, producer or other person should be permitted to be the assignee or transferee of an annual allotment, or portion thereof, except in conjunction with the transfer of an allotment base pursuant to new § 989.64, as this could develop into speculative activity and a garnering of allotments which could adversely affect orderly marketing, particularly if a handler used them to acquire surplus raisins at less than prevailing field prices for salable. However, a person other than a handler should be permitted to deliver raisins in lieu of the producer holding the allotment but no handler should receive raisins from such other person except to the extent authorized by the committee. This is necessary to permit such things as further dehydration of the grapes or reconditioning of the raisins by persons other than the producer but these persons must be regulated as to volume delivered to preserve the objectives of the allotment program. Hence, the handler receipts from such persons should be only those authorized by the committee. So that the issuance and use of annual allotments may be set forth in more detail, the committee, with the approval of the Secretary, should be authorized to issue such rules and procedures as are necessary to administer paragraph (c) of new § 989.63.

(3) Producers of raisin variety grapes occasionally change vineyard locations, they sell or buy vineyards, they rent on a cash basis or by share cropping, and they cease being producers in that they sell their vineyards to other producers or to real estate dealers for such purposes as housing developments. Hence, provisions relative to producer allotments should be sufficiently flexible to accommodate these changes of location or status but with limitations so that the basic function of the allotment program, of alloting among producers the raisins which handlers may acquire, will be preserved.

Therefore, a new § 989.64 *Transfers,* should be added to the order to authorize any producer to transfer, subject to limitations, either (a) from the location(s) where he produces his annual allotment to other land which he farms, or (b) all or part of his assigned allotment base from himself to another producer.

It may happen that a producer desiring to make either type of transfer is not the owner of the original vineyard land. Thus, with respect to the location type transfer, the new section should provide that no such transfer shall be valid and no further annual allotments referable to such vineyard shall be granted to such producer unless the owner consents to the transfer. Likewise, with respect to a transfer to another producer, the section should provide that the transfer shall not be recognized nor shall an annual allotment be granted by the committee to the potential transferee unless the vineyard owner consents to the transfer. These limitations are necessary to assure outlets for the production of the original vineyard and so protect the vineyard owner's investment. Otherwise, for example, a cash renter (the producer on the original vineyard) could transfer to some other producing location or transfer his allotment base to another producer, with the result that the subsequent producer on the original vineyard acreage, whether he is the owner or a new cash or share renter, would be without an allotment and an ability to sell raisins to handlers. In addition, since the allotment provisions are for the purpose of adjusting excess production to demand, there would be no function served by the original vineyard remaining in production and additional production encouraged by such transfer of location or of allotment base.

With respect to either type of transfer, when the original vineyard continues in production and the owner will not consent to the transfer, the allotment base should be held in temporary suspension by the committee so its assignment can be resolved. Assignment should be resolved promptly to avoid absence of annual allotments to producers otherwise eligible for such. The allotment base should be permitted to be assigned by the committee as follows: If the owner has taken over the farming of the vineyard and becomes the producer, the allotment base should be assigned to him; if the owner arranges for another person to operate the vineyard, such person becomes the producer and the allotment base should be assigned to him; if the owner lets the vineyard to a person on a share rental basis, both become producers and the allotment base should be assigned to both either jointly or in proportion to their respective shares in accordance with the terms of their contract.

So that the committee will be assured of the information necessary to administer the transfer of location provisions, the new section should require the committee, by such means as are provided in new § 989.63(c), to obtain information as to the location(s) where each producer intends to produce each annual allotment.

Relative to transfers of allotment bases between producers, new § 989.64 should provide that no such transfer shall be recognized by the committee except upon the transferor and transferee notifying the committee in writing with regard thereto and the transferee submitting evidence of capability to produce and harvest the annual allotment referable thereto. This is to provide the committee with information needed for allotment operations and to preclude transfer of an allotment base to a person unable to use it and who might want to acquire it for a speculative purpose.

New § 989.64 should also provide that if any producer disposes of acreage and ceases to be a producer thereon prior to the issuance of allotment bases pursuant to new § 989.63(a) and, if the purchaser continues the acreage in the production of raisins, such purchase should be deemed to authorize issuance of the applicable allotment base to the successor producer. Prior to the establishment of allotment bases, a producer may find it necessary or desirable to sell his vineyard. If the purchaser continues the vineyard in raisin production, the assignment of the allotment base to him would place the referable annual allotment in the hands of the successor in interest and so permit sale of raisins resulting from the vineyard.

(4) To enable the industry to control and dispose of raisins in excess of producers' annual allotments and carry out the objectives of the producer allotment provisions, a new § 989.68 *Excess over allotments* should be added to the order. Such section should provide that raisins in excess of an effective individual producer annual allotment, or the total of such allotments to members of a cooperative marketing association, shall be surplus raisins. Prior to February 15 of the crop year, producers of such raisins should be permitted to sell or transfer them to producers capable of using them to satisfy a deficiency of production relative to their annual allotments. As a means of preventing surplus raisins from entering unauthorized outlets, § 989.68 should also provide that no handler, other than a processor disposing of raisins in nonnormal outlets, shall acquire surplus raisins except that any handler who is a packer shall be a designee of the committee, under such conditions as it shall specify with the approval of the Secretary, to receive and hold surplus raisins for the account of the committee. As a further means of controlling surplus raisins, the section should provide that any producer or dehydrator selling or delivering surplus raisins to other than the committee or its designees, to a producer satisfying a deficiency, or to a processor disposing of them in nonnormal outlets, shall be a handler relative to such transaction. However, since surplus raisins of a producer's own production do not enter trade channels while on his premises, there should be no restriction on a producer's use of surplus raisins in his own farming operation. Therefore, § 989.68 should also provide that any producer may dispose of surplus raisins of his own production within his own livestock feeding operation or other farming operation but either prior to or after February 15 of the crop year in which produced, such raisins may be delivered to the committee or its designees for inclusion in the surplus pool.

Any raisins in excess of an individual producer's annual allotment would be surplus raisins in that they are not needed for normal outlets. However, a cooperative marketing association should be permitted, in view of its structure, and the provisions of its membership contracts, to concentrate raisins delivered pursuant to such contracts. Then, any raisins in excess of the total annual allotments to members of the association would be surplus raisins.

It is likely that some producers will have production in excess of their annual

allotments while others may not produce enough. So that the industry's salable quantity may be filled as nearly as practicable, producers with surplus raisins should be permitted to sell or transfer them to producers capable of using them to fill a deficiency of production relative to an annual allotment. Since surplus raisins may have been delivered to a handler, and be held for the account of the committee, transfer of such raisins to another producer should be permitted but under such conditions as the committee may specify as part of the obligations of a "designee" of the committee. All transfers should be made before a cutoff date so that the committee can determine the quantity of delivered surplus and begin disposition. February 15 should be designated as the cutoff date because normally all but a very small percentage of the crop is delivered and inspected by that time each year and such a cutoff would permit the committee to finalize the pool operation at some point early enough in the crop year to empty containers and make them available for new crop raisins. Consistent with this operating need, any surplus raisins delivered after February 15 should not be eligible for transfer and should be relegated to the surplus pool disposition.

So that there may an orderly disposition of surplus raisins and no conflict with the marketing of salable raisins, new § 989.68 should provide that surplus raisins held by a handler or other designee of the committee and those delivered directly to the committee shall be treated as a surplus pool and be disposed of by the committee as soon as practicable in nonnormal outlets and at the best terms and conditions obtainable. The proceeds, after deduction of pool expenses of receiving, handling, holding and disposing, including compensation to handlers or other designees, should be distributed on a pro rata basis to the equity holders and, consistent with the method long in effect under the order, in the case of a cooperative marketing association may be to such association.

It is expected that in most instances, packers will be holding the surplus raisins and this will arise, in part, from deliveries in excess of allotment. However, it may be that a packer does not want to store surplus raisins for the account of the committee. In that case, the committee may have to dispose of the raisins promptly or lease space to store surplus delivered to it by such handler or delivered directly to the committee by a producer. In any event, all such raisins should be treated as a common pool and all net proceeds distributed to the equity holders on the basis of the weight of raisins each is credited with in such pool.

(5) Conforming changes, as necessary, have been included in the foregoing material issues. However, as a further conforming change, there should be added at the end of the definition of raisins, § 989.5, a new sentence to the effect that the definition may be revised by the Secretary, upon recommendation of the committee, to include grapes dried prior to removal from the vines and used in normal outlets for raisins. While this is not the normal practice, it is engaged in some of the desert counties of the area where a small volume so dried is harvested and used as raisins, mostly in Mexico. With an allotment program, the volume so produced could become significant in the principal raisin producing counties of the San Joaquin Valley. Should this happen, it could jeopardize the volume limiting objectives of the allotment program and hence there should be authority in the order to make such dried grapes subject to the program.

Rulings on proposed findings and conclusions. The Presiding Officer announced at the hearing that interested persons would be allowed to and including May 19, 1967, to file with the Hearing Clerk, proposed findings and conclusions, and written arguments or briefs, based upon evidence received at the hearing. Briefs were filed by R. L. Engell, California Packing Corp.; Jake Mooradian and Girard Kasparin, producers; Leslie W. Dobbins, producer; Jay O. Eaton, producer; Einar Cook, producer; Dan R. Hoak, West Coast Growers and Packers, Inc.; Allan Grant, President, California Farm Bureau Federation; Chester M. McCloskey, producer; John C. Datt, Assistant Director, American Farm Bureau Federation; Kendall L. Manock, Attorney for the Raisin Administrative Committee; Deran Chooljian, producer; Mr. and Mrs. Harry Jenanyan, producers; Charles Jenanyan, producer, Delfino Rivera, producer; H. W. Pirkle, producer; and C. H. Seavor, Bonner Packing Co.

Points covered in these briefs have been considered carefully, in light of the scope of the notice and the evidence in the record in making the findings and reaching the conclusions herein set forth. To the extent that any suggested findings and conclusions contained in those briefs are inconsistent with the findings and conclusions contained herein, they are denied on the basis of the facts found and stated in connection with this recommended decision.

Recommended amendment of the order. The following further amendment of the raisin order is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

§ 989.5 [Amended]

1. A new sentence reading as follows is added at the end of § 989.5: "This definition may be revised by the Secretary, upon recommendation of the committee, to include grapes dried prior to removal from the vines and used in normal outlets for raisins."

2. Delete present §§ 989.54 and 989.55 and insert in lieu thereof the following:

§ 989.54 Marketing policy.

(a) *Allotment percentage.* As soon as practicable after February 1, but no later than June 15, the committee shall prepare and submit to the Secretary a report setting forth at least its recommended producer allotment marketing policy for the ensuing crop year. In formulating such marketing policy the committee shall consider and shall include in its report to the Secretary, at least the first eight of the following estimates and recommendations with respect to any varietal type on which such volume regulation is intended and shall include the other following estimates and recommendations, when pertinent, no later than the October meeting pursuant to paragraph (c) of this section:

(1) The likely carry-over of free and reserve tonnage raisins as of September 1;

(2) The prospective crop year trade demand in free tonnage outlets and the desirable free tonnage;

(3) The prospective crop year trade demand in reserve tonnage outlets other than as free tonnage, considering the estimated world raisin supply and demand situation;

(4) The desirable carry out of free and reserve raisins at the end of the ensuing crop year;

(5) The salable quantity of raisins necessary to meet total trade demand, permit desirable adjustments in carry-over, and recognize the reduced annual allotments, due to productive capacity, of § 989.63(c);

(6) The producer allotment percentage for the ensuing crop computed by dividing the salable quantity by the total of all producer allotment bases established pursuant to § 989.63;

(7) Current raisin prices being received and the probable general level of raisin prices to producers and handlers in the ensuing crop year;

(8) The trend and level of consumer income;

(9) Other estimates or recommendations pertinent to the ensuing crop such as the estimated tonnage of standard and offgrade raisins, modifications of the minimum grade standards, free and reserve percentages, prohibition of trade practices pursuant to § 989.62 or other matters; and

(10) Any other pertinent factors bearing on the marketing of raisins including the estimated supply and demand for other varietal types and regulations applicable thereto.

(b) *Desirable free tonnage.* The tonnage of raisins of any varietal type to be sold in the ensuing crop year as free tonnage shall be designated as "desirable free tonnage". Until changed by the committee, with the approval of the Secretary, the desirable free tonnage shall be 140,000 tons for natural Thompson Seedless raisins.

(c) *Free and reserve percentages.* Either as part of its pre-June 16 marketing policy or on or before October 5 of each crop year (except that this date may be extended by the committee not more than 5 days if warranted by a late crop) the committee shall recommend to the Secretary a preliminary free tonnage percentage which will release not less than 65 percent of the desirable free tonnage established for any varietal type. Upon a committee determination that field prices are firmly established and open price contracts have been closed

as to price on at least 65 percent of the tonnage acquired by packers not marketing cooperatives, or such other percent as is recommended by the committee and approved by the Secretary, but no later February 15, the committee shall recommend to the Secretary a free percentage which will tend to release the full desirable free tonnage. Prior to February 15, an interim change of percentage may be made to release less than the full tonnage. The difference between any preliminary or final free tonnage percentage and 100 percent shall be the reserve percentage. In developing its free and reserve percentage for any varietal type, the committee shall consider and report to the Secretary any factors pertinent to its recommendation and not included in a prior marketing policy report for the crop year.

(d) *Modification.* In the event the committee deems it advisable to modify its marketing policy for any crop year, because of national emergency, crop failure or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, or holidays) after the holding of such meeting, which report shall show each modification, the basis therefor, and the recommendation of the board.

(e) *Verbatim record.* The committee shall file with its report to the Secretary a verbatim record of that portion of its meeting or meetings relating to its marketing policy.

(f) *Publicity and notice.* The committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar notice shall be given to producers, dehydrators, handlers, and cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The committee shall notify handlers, dehydrators, and cooperative bargaining associations(s) of the Secretary's action on percentages by registered or certified mail.

§ 989.55 Establishment.

If the Secretary finds from the recommendation and supporting information supplied by the committee, or from other information, that limiting the quantity of raisins of any varietal type that handlers may purchase from or handle on behalf of producers in any crop year would tend to effectuate the declared policy of the act he shall determine the salable quantity of such raisins and establish the annual allotment percentage, on the ensuing crop, to be applied to each producer's allotment base on such raisins. This percentage shall be determined by dividing the salable quantity by the total of all allotment bases established pursuant to § 989.63. He shall also establish as necessary, or modify, the desirable free tonnage for any varietal type; and simultaneously, or in a subsequent action, depending upon the time of the committee's recommendation and his finding that it would tend to effectuate the declared policy of the act, designate free and reserve percentages, applicable to the standard raisins acquired exclusive of surplus, and such modifications thereof as are consistent with § 989.54(c). In the event the Secretary subsequently finds from the recommendations and supporting information supplied by the committee, or from any other available information, that modification, suspension, or termination of any such designation will tend to effectuate the declared policy of the act, he shall so modify, suspend, or terminate such designation. No such modification shall decrease the free percentage initially designated by the Secretary. The Secretary shall notify the committee promptly of each such action.

3. Add a new § 989.56 reading as follows:

§ 989.56 Prohibition.

Whenever an allotment percentage has been established by the Secretary and is in effect for a varietal type of any crop, no handler other than a processor shall acquire such raisins, except as provided in § 989.68, in excess of a producer's annual allotment as determined by the committee pursuant to § 989.63(c) nor acquire any varietal type from a producer without an allotment base nor with respect to a varietal type for which no allotment percentage is in effect from acreage in excess of that for which the allotment base was established.

4. Add new §§ 989.63 and 989.64 reading as follows:

§ 989.63 Allotment of salable quantity.

(a) *Allotment bases.* (1) Except as provided in subparagraph (2) of this paragraph, the allotment base for each producer of raisins in 1966, for any varietal type of raisins, shall be the higher of:

(i) His sales of 1966 crop raisins; or

(ii) If his 1965 and 1966 raisin sales were from the same land, his sales per acre of 1965 crop raisins multiplied by his 1966 acreage used to produce the same varietal type of raisins.

(2) If for the reasons listed in this subparagraph the committee finds that a producer's allotment base computed pursuant to subparagraph (1) of this paragraph is inappropriate, such producer's allotment base shall be determined consistent with that applicable to each reason as follows:

(i) For new acreage planted on or after January 1, 1964, and prior to April 7, 1967, of a varietal type (other than Zante Currant or Monukka grapes) in which producer shows raisin sales in 1966, but only for such new acreage as will not result in a ratio of his raisin production acreage to total grape acreage to exceed such 1966 ratio or if he produced raisins in the two prior years, the average such ratio for 1964, 1965, and 1966, whichever is lower, the allotment base shall include his applicable new acreage multiplied by the producer's average sales per acre in the portion of the allotment base computed for his mature acreage or if all his raisin production acreage was immature in 1966, such acreage multiplied by the lower of the 1966 industry-wide average sales per acre of the like varietal type or the committee's determination of the probable sales per acre when mature.

(ii) For new acreage planted on or after January 1, 1964, and prior to April 7, 1967, of either Zante Currant or Monukka grapes, the producer's total allotment base shall include such new acreage multiplied by the producer's 1966 sales per acre of the like varietal type from his mature acreage or if none, by the lower of the 1966 industry-wide average sales per acre of the like varietal type or the committee's determination of the probable sales per acre when mature.

(iii) For a raisin producing grape vineyard acquired prior to April 7, 1967, but on or after November 1, 1964, on which the 1965 and 1966 raisin sales per acre on the acreage used to produce raisins was below the 1966 industry-wide average for the varietal type and the producer establishes to the satisfaction of the committee a commitment to improve the raisin sales per acre, the allotment base shall be determined as the raisin producing acres in 1966 multiplied by the 1966 industry-wide average sales per acre of the varietal type or, if higher, by the committee's determination of the probable sales per acre from such raisin acreage in the third year after acquisition.

(iv) For severe adverse weather or incapacitating personal hardship, established to the satisfaction of the committee as the primary factor causing a raisin producer to have a sharply reduced level of sales in 1965 and 1966 or failure to produce any raisins in 1966, the allotment base shall be the highest acreage of the vineyard used for raisins in the 1964–1966 period, but not in excess of the producer's total 1966 acreage of that varietal type, multiplied by the lower of the 1966 industry-wide average sales per acre of the like varietal type or the producer's highest prior raisin sales per acre in the 1964–1966 period, as determined by the committee.

(3) For purposes of allotment, those varietal types designated in § 989.10 as natural (sun-dried) Thompson Seedless, Golden Seedless, Sulphur Bleached and Soda Dipped shall be combined into the "Thompson Seedless Raisin" varietal type and natural (sun-dried) Muscat, Layer Muscat, and Valencia shall be combined into the "Muscat Raisin" varietal type. The committee, with the approval of the Secretary, shall establish industry-wide average sales per acre by varietal types and such conversion factors of fresh tons to dry tons as will permit allotment bases and annual allotments on raisins to be administered,

where appropriate, as fresh tons of grapes.

(4) In accordance with this paragraph (a) and based on reports of handlers, producer certifications and other information, the committee shall establish and assign to each producer his allotment base: *Provided,* That no base or adjusted base shall be assigned to a person no longer a producer nor pursuant to (2) (iv) of this paragraph unless the committee finds that he made a bona fide effort to produce his applicable annual allotment of raisins in the first crop year after the effective date of this section and failing to do so, his eligibility for an allotment base shall be cancelled. The eligibility of any producer, or his legal successor in interest, to receive or retain an allotment base shall be dependent upon his continuing to make a bona fide effort to produce his annual allotment of raisins and failing to do so in any year, the applicable base quantity shall be reduced by a percentage equivalent to the unproduced portion of the allotment: *Provided,* That the committee, with the approval of the Secretary, may waive this requirement for good cause. However, 5 consecutive years of reduced or no production shall be permitted to replant existing acreage or rotate to new acreage. Administration of the assignment and retention of allotment bases shall be in accordance with such rules and procedures as the committee may prescribe, with the approval of the Secretary.

(b) *Additional allotment bases.* Each year the committee shall consider the need for granting, and if appropriate grant, with the approval of the Secretary, additional allotment bases, to either new producers or existing producers, or both, for such purposes as satisfying the demand for one or more varietal types, or adjusting the total of all allotment bases to the trade demand. The committee shall prescribe, with the approval of the Secretary, such rules and regulations as are necessary to administer this paragraph.

(c) *Issuance of annual allotments.* As early as possible in each calendar year, the committee shall issue to each eligible producer, for the ensuing crop, an annual allotment determined by applying the allotment percentage established pursuant to § 989.55 to the producer's allotment base. Such issuance shall be conditioned upon the producer filing annually with the committee, a form provided by it wherein the producer states such things as where he intends to produce his annual allotment, his raisin variety grape acreage, the acreage he intends to harvest for raisins, changes of location, if any, and such other information as is necessary for administration of this part. Where a producer indicates that his acreage, or that which he intends to harvest for raisins, will be insufficient to produce his computed annual allotment, the committee shall make an appropriate reduction in the annual allotment it issues. Except in conjunction with the transfer of an allotment base pursuant to § 989.64, no handler, producer, or other person shall be the assignee or transferee of an annual allotment, or portion thereof, except that a person other than a handler may deliver raisins in the stead of the producer holding the allotment but no handler shall receive raisins from such other person except to the extent authorized by the committee. The committee, with the approval of the Secretary, may issue such rules and procedures as are necessary to administer this paragraph.

§ 989.64 Transfers.

(a) *Of location.* A producer owning the vineyard(s) determining the base quantity may transfer from the location(s) where he produces his annual allotment to other land which he farms. If a producer does not own the original vineyard land no such transfer shall be valid and no further annual allotments referable to such vineyard(s) shall be granted by the committee to such producer unless the vineyard owner consents to the transfer. The committee shall, by such means as are provided in § 989.63(c), obtain information as to the location(s) where each producer intends to produce each annual allotment.

(b) *To another producer.* A producer owning the vineyard(s) determining the allotment base may transfer all or part of an allotment base from himself to another producer. However, if the transferor is not the owner of the vineyard(s), the transfer shall not be valid nor shall an annual allotment be granted by the committee to the potential transferee unless the vineyard owner consents to the transfer. No transfer shall be recognized by the committee except upon the transferor and transferee notifying the committee in writing and the transferee submitting evidence of capability to produce and harvest the annual allotment referable thereto. If any producer disposes of acreage and ceases to be a producer thereon prior to the issuance of allotment bases pursuant to § 989.63(a), and if the purchaser continues the acreage in the production of raisins, such purchase shall be deemed to authorize issuance of the applicable allotment base to the successor producer.

5. Add a new § 989.68 reading as follows:

§ 989.68 Excess over allotments.

(a) *General.* Raisins that are in excess of an effective individual producer annual allotment, or the total of such allotments to members of a cooperative marketing association, shall be surplus raisins. Prior to February 15 of the crop year such excess raisins may be sold or transferred to producers capable of using them to satisfy a deficiency of production relative to their annual allotment. No handler, other than a processor disposing of raisins in nonnormal outlets, shall acquire surplus raisins, except that any handler who is a packer shall be a designee of the committee, under such conditions as it shall specify with the approval of the Secretary, as to holding and delivery obligations, to receive and hold surplus raisins for the account of the committee. Any producer or dehydrator selling or delivering surplus raisins other than to the committee or its designees, to a producer satisfying a deficiency as provided in this paragraph, or to a processor disposing of them in nonnormal outlets, shall be a handler relative to such transaction. Any producer may dispose of surplus raisins of his own production within his own livestock feeding or other farming operation or may deliver them, prior to or after February 15 of the crop year in which produced, to the committee for inclusion in a surplus pool.

(b) *Pooling.* Surplus raisins held by a handler or other designee of the committee and those delivered directly to the committee, shall be treated as a surplus raisin pool and shall be disposed of by the committee as soon as practicable in nonnormal outlets and at the best terms and conditions obtainable. The proceeds, after deduction of committee expenses of receiving, handling, holding and disposing, including compensation to handlers or other designees, shall be distributed on a pro rata basis to the equity holders and in the case of a cooperative marketing association may be to such association.

Dated: October 12, 1967.

JOHN C. BLUM,
Acting Deputy Administrator, Regulatory Programs.

[F.R. Doc. 67-12303; Filed, Oct. 17, 1967; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Proposal Regarding Bentonite in Nihydrazone-Containing Feed

Based on available information, the Commissioner of Food and Drugs has concluded that § 121.237 of the food additive regulations should be amended to provide that animal feeds containing nihydrazone not contain bentonite. Information establishes that the presence of bentonite in feeds interferes with the method of analysis for nihydrazone and thereby influences control over the safety and effectiveness of nihydrazone-containing feeds.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120), it is proposed that § 121.237 be amended by revising the introduction to paragraph (d) to read as follows:

§ 121.237 Nihydrazone.

* * * * *

(d) The additive is used or intended for use in feeds that do not contain bentonite, as follows:

* * * * *

Any interested person may, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written comments, preferably in quintuplicate, on this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: October 10, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-12318; Filed, Oct. 17, 1967; 8:48 a.m.]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[29 CFR Part 1602]

EMPLOYER REPORTING REQUIREMENTS

Notice of Public Hearing

Pursuant to section 709(c), Title VII, Civil Rights Act of 1964, notice is hereby given that the Equal Employment Opportunity Commission will conduct a public hearing at 10 a.m., on Wednesday, November 8, 1967, in Room 1213, 1800 G Street NW., Washington, D.C., with respect to proposed revisions in Equal Employment Opportunity Employer Information Report EEO-1 (Standard Form 100).

Interested persons are invited to participate in, and to present evidence, views, and arguments with respect to the proposed revisions at said hearing. Pertinent statements from interested persons may be submitted in writing to the Director, Office of Research and Reports, Equal Employment Opportunity Commission, 1800 G Street NW., Washington, D.C. 20506, by 5:30 p.m., e.s.t., Wednesday, November 8, 1967.

A copy of the proposed revised Employer Information Report EEO-1 is available for inspection at the Office of the Federal Register, National Archives Building, Washington, D.C., or at the Office of Research and Reports, Equal Employment Opportunity Commission, 1800 G Street NW., Washington, D.C.

Description of proposed revisions in employer information report EEO-1. It is proposed to add a separate schedule, Apprenticeship Schedule A, to Report EEO-1. The only significant changes in EEO-1 proper would be the following: The line requiring total number of apprentices by minority group and sex in item 5 of section E would be deleted. Also, in the same table, the term, "Spanish American," would be replaced by the term, "Americans of Spanish Surname;" but the definition of the new term and the nationality groups to be included within it would be the same as in the case of the forms previously used. In addition, the instructions would be changed so that multiestablishment employers in retail, wholesale, finance, insurance, real estate, and service industries would no longer be required to combine data by designated city, Standard Metropolitan Statistical Area, and by State outside of Standard Metropolitan Statistical Areas if they do not choose to do so. The same will apply to establishments with less than 50 employees of multiestablishment employers in other than these specified industries. Such employers would be given the option to combine data as indicated or to file separate reports for each establishment. No changes are proposed in the types of employers who are required to file EEO-1.

The proposed Apprenticeship Schedule A would be filed by employers who operate apprenticeship programs unilaterally or who operate apprenticeship programs under the terms of an agreement with a labor organization, which programs are not operated and administered by a joint labor-management apprenticeship committee and were not reported on Apprenticeship Information Report EEO-2. The statistical data to be reported would be the same as in EEO-2—a separate table for each trade and craft in the reporting unit giving the number of apprentices by sex and minority group for each year of apprenticeship; and the employer's estimate of the number of persons from each of the minority groups applying for admission to the program during the past year. The employer would be asked to answer five questions requiring "Yes" or "No" answers or the checking of applicable boxes mainly concerning the methods by which he circulated information about apprenticeship openings and opportunities.

Multiestablishment employers which operate more than one apprenticeship program will not be required to file consolidated reports on Apprenticeship Schedule A.

The special exemption from reporting employment statistics on EEO-1 for employers in the construction industry who do not have 100 or more permanent employees would not apply to Schedule A. The filing of Apprenticeship Schedule A would be required of all employers in the construction industry who operate apprenticeship programs and whose total employment is 100 or more, or 50 or more if the employer has a Federal Government contract or subcontract or a federally assisted contract or subcontract of $50,000 or more.

CLIFFORD L. ALEXANDER, Jr.,
Chairman.

OCTOBER 13, 1967.

[F.R. Doc. 67-12266; Filed, Oct. 17, 1967; 8:45 a.m.]

Notices

ATOMIC ENERGY COMMISSION

[Docket No. 50-274]

GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

Notice of Issuance of Construction Permit

No request for a hearing or petition for leave to intervene having been filed following publication of the notice of proposed action in the FEDERAL REGISTER on September 23, 1967 (32 F.R. 13424), the Atomic Energy Commission has issued, in the form set forth in that notice, Construction Permit No. CPRR-102 to U.S. Geological Survey, Department of the Interior. This permit authorizes U.S. Geological Survey to receive, possess, and construct a TRIGA Mark I nuclear reactor on its Federal Center site in Denver, Colo.

Dated at Bethesda, Md., this 10th day of October 1967.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing

[F.R. Doc. 67-12267; Filed, Oct. 17, 1967; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[New Mexico 2738]

NEW MEXICO

Notice of Proposed Classification of Lands

OCTOBER 11, 1967.

Pursuant to section 2 of the Act of September 19, 1964 (43 U.S.C. 1412), notice is hereby given of a proposal to classify the lands described below for disposal through exchange, under the Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315g), as amended, for lands within Catron and Valencia Counties, N. Mex.

The District Advisory Board, local governmental officials and other interested parties have been notified of this application. Information derived from discussions and other sources indicate that these lands meet the criterion of 43 CFR 2410.1-3(c)(4), which authorizes classification of lands "for exchanges under appropriate authority where they are found to be chiefly valuable for public purposes because they have special values, arising from the interest of exchange proponents, for exchange for other lands which we need for the support of a Federal program." Information concerning the lands, including the record of public discussions, is available for inspection and study in the Land Office, Bureau of Land Management, U.S. Post Office and Federal Building, Santa Fe, N. Mex. 87501 and Socorro District Office, 200 Neel Avenue, Socorro, N. Mex. 87801.

For a period of 60 days from the date of this publication, interested parties may submit comments to the District Manager of the Socorro District Office.

The lands affected by this proposal are located in Socorro County, N. Mex., and are described as follows:

NEW MEXICO PRINCIPAL MERIDIAN

T. 3 S., R. 4 W.,
Sec. 4, lot 3, SE¼NW¼ and NE¼SW¼;
Sec. 6, SE¼SE¼;
Sec. 7, lots 2, 5, 6, 7, 8, E½ and SE¼NW¼;
Sec. 18, NE¼NE¼ and S½NE¼.
T. 4 S., R. 4 W.,
Sec. 6, lots 1, 2, 3, 4, 6, 7, E½SW¼, and SE¼;
Sec. 7;
Sec. 18, lots 1, 2, 3, NE¼, E½NW¼, NE¼, SW¼, and N½SE¼.
T. 4 S., R. 5 W.,
Sec. 1, SE¼SE¼;
Sec. 12, E½NE¼ and SE¼;
Sec. 26, W½NW¼;
Sec. 27, E½NE¼.
T. 5 S., R. 8 W.,
Sec. 17, lots 3, 4, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 18, lots 6, 7, 8, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 19;
Sec. 20, lot 1, W½NE¼, SE¼NE¼, NW¼, and S½;
Sec. 21, lots 1, 2, 3, 4, S½N½, and N½S½;
Sec. 28, W½E½ and W½;
Secs. 29 and 30;
Sec. 31, lots 5, 6, 7, 8, 9, 12, 13, 14, W½NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 32, lots 1 to 6, inclusive;
Sec. 33.

The areas described aggregate 8,540.39 acres.

W. J. ANDERSON,
State Director.

[F.R. Doc. 67-12288; Filed, Oct. 17, 1967; 8:46 a.m.]

[S 579, 581, 582]

CALIFORNIA

Notice of Proposed Classification of Public Lands for Multiple-Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411-18) and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify for multiple-use management the public lands in paragraph 3, together with any lands located in the areas described in paragraph 3 that may become public lands in the future. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. Publication of this notice has the effect of segregating (a) all public lands described below from appropriation only under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C., sec. 334) and from sale under section 2455 of the revised statutes (43 U.S.C. 1171) and (b) the lands described in paragraph 4 from appropriation under the mining laws (30 U.S.C., Ch. 2). The lands shall remain open to all other applicable forms of appropriation.

3. The public lands are located within Shasta and small portions of Modoc, Siskiyou, and Tehama Counties and include the Clear Creek, Cinder Cone, and Shasta Planning Units. For the purpose of this proposed classification, the lands within each planning unit have been subdivided into blocks, each of which have been analyzed in detail and described in documents and on maps available for inspection at the Redding District Office, Bureau of Land Management, 2460 Athens Avenue, Redding, Calif. 96001 and in the Sacramento Land Office, 650 Capitol Mall, Sacramento, Calif. 95814.

The overall description of the areas is as follows:

CLEAR CREEK PLANNING UNIT (S 581), SHASTA AND TEHAMA COUNTIES

MOUNT DIABLO MERIDIAN, CALIFORNIA

Block I

All public lands in:
T. 30 N., R. 7 W.,
Secs. 6, 7, and 18.
T. 29 N., R. 8 W.,
Sec. 6.
T. 30 N., R. 8 W.,
Secs. 1 to 22 inclusive, and 28 to 32 inclusive.
T. 31 N., R. 8 W.,
Secs. 9, 10, 14, 15, 16, 20 to 23 inclusive, and 26 to 35 inclusive.
T. 28 N., R. 9 W.,
Secs. 2 to 6 inclusive.
T. 29 N., R. 9 W.,
Secs. 1 to 4 inclusive, 9 to 11 inclusive, 14 to 16 inclusive, 19 to 22 inclusive, and 27 to 34 inclusive.
T. 30 N., R. 9 W.,
Secs. 1, 2, 3, 9 to 17 inclusive, 20 to 29 inclusive, and 32 to 36 inclusive.
T. 31 N., R. 9 W.,
Secs. 25, 26, 35, and 36.

Block II

All public lands in:
T. 32 N., R. 6 W.,
Secs. 2, 3, 5, 6, 11, and 14.
T. 33 N., R. 6 W.,
Secs. 5 to 8 inclusive, 17 to 23 inclusive, and 26 to 35 inclusive.
T. 34 N., R. 6 W.,
Secs. 4 to 8 inclusive, 17 to 22 inclusive, and 27 to 34 inclusive.
T. 32 N., R. 7 W.,
Secs. 1, 5 to 8 inclusive, and 18.
T. 33 N., R. 7 W.,
Secs. 1 to 33 inclusive, 35 and 36.

T. 34 N., R. 7 W.,
Secs. 1 and 2.
T. 32 N., R. 8 W.,
Secs. 1, 2, 11 to 14 inclusive.
T. 33 N., R. 8 W.,
Secs. 1, 12, 13, 24 to 27 inclusive, 35 and 36.

Block III

All public lands in:
T. 30 N., R. 5 W.,
Sec. 6.
T. 31 N., R. 5 W.,
Sec. 5, lots 6, 31 to 34 inclusive, 36 to 43 inclusive, 63, 64, 66 to 74 inclusive, and 76 to 80 inclusive.
Sec. 6, lot 1.
Sec. 7.
Sec. 8, E½E½NE¼, NW¼.
Secs. 9 and 10.
Secs. 17, 21, 28, 29, 31, and 32.
T. 32 N., R. 5 W.,
Secs. 1, 3, and 4.
Sec. 8, E½ lot 11, lots 12 and 15.
Sec. 10, E½SW¼SW¼, SE¼SW¼.
Sec. 15, lot 2, NW¼SW¼NE¼ except portion of MS 5197, E½NW¼, except portion of MS 4972, NE¼SW¼, S½NW½SW¼.
Sec. 28.
Sec. 29, lots 8 and 9.
Secs. 30 and 31.
Sec. 32, lot 212.
T. 33 N., R. 5 W.,
Secs. 19, 20, 22, 27, 28, 32, and 33.
Sec. 34, E½NE¼, W½.
T. 31 N., R. 6 W.,
Secs. 7, 11, 12, 14, 16 to 20 inclusive, 22 and 23.
Sec. 24, NE¼SE¼, N½SE¼SE¼.
Sec. 36.
T. 32 N., R. 6 W.,
Sec. 24, lots 67 to 70 inclusive, and 91 to 93 inclusive.
T. 33 N., R. 6 W.,
Sec. 15.
T. 31 N., R. 7 W.,
Sec. 12.

CINDER CONE PLANNING UNIT (S 579) SHASTA, SISKIYOU, AND MODOC COUNTIES

MOUNT DIABLO MERIDIAN, CALIFORNIA

Block I

All public lands in:
T. 35 N., R. 4 E.,
Secs. 4 to 9 inclusive, 17, 20, 29, and 32.
T. 36 N., R. 4 E.,
Secs. 7 to 36 inclusive.
T. 37 N., R. 4 E.,
Secs. 22, 23, 26, 27, 28, 33, 34, and 35.
T. 35 N., R. 5 E.,
Secs. 9, 10, 15, 16, 21, 22, and 27.
T. 36 N., R. 5 E.,
Secs. 1 to 36 inclusive.
T. 37 N., R. 5 E.,
Secs. 25 to 28 inclusive, and 32 to 36 inclusive.

Block II

All public lands in:
T. 38 N., R. 4 E.,
Secs. 1, 2, 11 to 17 inclusive, 20 to 24 inclusive, and 28.
T. 39 N., R. 4 E.,
Secs. 13, 24, 25, 26, 35, and 36.
T. 38 N., R. 5 E.,
Secs. 4 to 9 inclusive, 16 to 22 inclusive, and 27.
T. 39 N., R. 5 E.,
Secs. 7, 15 to 22 inclusive, and 27 to 34 inclusive.

SHASTA PLANNING UNIT (S 582) SHASTA COUNTY

MOUNT DIABLO MERIDIAN, CALIFORNIA

All public lands in:
T. 33 N., R. 2 E.,
Secs. 3, 8, 9, 10, and 17.
T. 30 N., R. 1 W.,
Sec. 12, NE¼, SE¼NW¼, S½.
T. 31 N., R. 1 W.,
Secs. 14, 20, and 22.
T. 33 N., R. 1 W.,
Sec. 8.
T. 34 N., R. 1 W.,
Sec. 30.
T. 35 N., R. 1 W.,
Sec. 14, NE¼NW¼.
T. 31 N., R. 2 W.,
Sec. 22.
T. 33 N., R. 2 W.,
Secs. 22 and 28.
T. 33 N., R. 3 W.,
Secs. 26 and 32.

The public lands proposed to be classified aggregate approximately 76,032.42 acres.

4. As provided in paragraph 2 above, the following lands are further segregated from appropriation under the mining laws (totaling approximately 1,220 acres):

MOUNT DIABLO MERIDIAN

T. 36 N., R. 4 E.,
Sec. 10, lot 3.
T. 30 N., R. 1 W.,
Sec. 12, NE¼, SE¼NW¼, S½.
T. 33 N., R. 6 W.,
Sec. 32.

5. For a period of sixty (60) days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the Redding District Manager, Bureau of Land Management, 2460 Athens Avenue, Redding, Calif. 96001, or at the public hearing.

6. A public hearing on this proposed classification will be held at 10 a.m., on October 25, 1967, in the Supervisor's Chambers, Shasta County Courthouse, Redding, Calif.

For State Director.

RICHARD L. THOMPSON,
District Manager.

[F.R. Doc. 67-12329; Filed, Oct. 17, 1967; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

UNIVERSITY OF PENNSYLVANIA ET. AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No.: 68-00141-33-46500 Applicant: University of Pennsylvania, School of Veterinary Medicine, 3800 Spruce Street, Philadelphia, Pa. 19104. Article: Ultramicrotome, model LKB 4800A-NM. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is to be used in an investigation of the cell adhesion phenomenon in nematode larvae exposed to antibody-producing cells from immunized vertebrate hosts. Material will be prepared in equal thickness sections to establish cellular relationships. Application received by Commissioner of Customs: September 18, 1967.

Docket No.: 68-00145-65-82600 Applicant: University of Missouri at Rolla, General Services Building, Purchasing Department, Rolla, Mo. 65401. Article: Recording Vacuum Thermoanalyzer with auxiliary equipment consisting of the following: High Vacuum Installation; DTA Amplifier Installation; Derivative Computor Installation; Middle Range Furnace Installation; High Temperature Furnace Installation; and High Temperature Corrosive Gas Inlet. Manufacturer: Mettler Analytical and Precision Balances, Switzerland. Intended use of article: The article will be used in basic investigations into the thermal behavior of materials in controlled gas environments. Application received by Commissioner of Customs: September 18, 1967.

Docket No.: 68-00150-33-46040 Applicant: State University of New York, Downstate Medical Center, Department of Pathology, 450 Clarkson Avenue, Brooklyn, N.Y. 11203. Article: Electron Microscope, EM-300 with Rotating Tilting Stage, 70mm Film Holder, Dessicator, and Decontamination Device. Manufacturer: N. V. Philips Gloeilampenfabrieken, The Netherlands. Intended use of article: The article will be used to examine fine structure of induced patho-biological tissue changes, correlative light and electron microscopy will be carried out to examine the same cells in thin and thick plastic sections. Application received by Commissioner of Customs: September 21, 1967.

Docket No.: 68-00151-33-02500 Applicant: Oregon State Board of Health, Public Health Laboratory, 1400 Southwest

Fifth Avenue, Portland, Oreg. 97201. Article: Amino Acid Analyser, model 034-02. Manufacturer: Hitachi Perkin-Elmer, Japan. Intended use of article: The article will be used to confirm bacterial assay screening tests initially provided by the bacterial inhibition assay method of Dr. R. Guthrie. Determinations of quantitative values of amino acids which may show abnormal findings on newborn infants will be made. Infants placed on therapeutic diets will be monitored and the levels of 17 essential amino acids on infants placed on dietary treatment will be determined. Application received by Commissioner of Customs: September 21, 1967.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 67-12268; Filed, Oct. 17, 1967; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

CIBA AGROCHEMICAL CO.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1), notice is given that a petition (PP 8F0647) has been filed by the CIBA Agrochemical Co., Post Office Box 1105, Vero Beach, Fla. 32960, proposing the establishment of a tolerance of 0.1 part per million for residues of the herbicide *N*-(*p*-bromophenyl)-*N'*-methyl-*N'*-methoxyurea in or on the raw agricultural commodity potatoes.

The analytical method proposed for determining residues of the herbicide is a colorimetric technique in which the residue is hydrolyzed to *p*-bromoaniline, steam distilled and extracted into isooctane, diazotized, and coupled with α-naphthol to provide a colored compound. Plant material is separated from the colored compound by thin-layer chromatography. The absorbance of the colored compound is measured on a spectrophotometer at 500 millimicrons.

Dated: October 10, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-12319; Filed, Oct. 17, 1967; 8:48 a.m.]

FMC CORP.

Notice of Withdrawal of Petition for Food Additive Binapacryl

Pursuant to the provisons of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), FMC Corp., 100 Niagara Street, Middleport, N.Y. 14105, has withdrawn its petition (FAP 6H2021), notice of which was published in the FEDERAL REGISTER of May 26, 1966 (31 F.R. 7593), proposing the establishment of a food additive tolerance of 3 parts per million for residues of binapacryl (2-*sec*-butyl-4,6-dinitrophenyl 3-methyl-2-butenoate) in dried peaches.

Dated: October 10, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-12320; Filed, Oct. 17, 1967; 8:48 a.m.]

ROHM & HAAS CO.

Notice of Withdrawal of Petitions for Pesticide Chemical and Food Additive Nickel Sulfate

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 408(d)(1), 409(b), 68 Stat. 512, 72 Stat. 1786; 21 U.S.C. 346a(d)(1), 348(b)), the following notice is issued:

In accordance with § 120.8 *Withdrawal of petitions without prejudice* of the pesticide procedural regulations (21 CFR 120.8) and § 121.52 *Withdrawal of petitions without prejudice* of the food additive procedural regulations (21 CFR 121.52), Rohm & Haas Co., Independence Mall West, Philadelphia, Pa. 19105, has withdrawn its pesticide petition (PP 3F0386) proposing the establishment of a pesticide tolerance of 45 parts per million for residues of the fungicide nickel sulfate (calculated as Ni) in or on the whole grain and straw of barley, oats, rye, and wheat and has withdrawn its related food additive petition (FAP 6H1990) proposing the establishment of food additive tolerances for residues of the fungicide of 175 parts per million in the bran of barley, oats, rye, and wheat, and 8 parts per million in flour. Notice of these related petitions was published in the FEDERAL REGISTER of March 29, 1966 (31 F.R. 5082).

Dated: October 10, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-12321; Filed, Oct. 17, 1967; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Dockets Nos. 19103, 18603; Order E-25823]

ALITALIA-LINEE AEREE ITALIANE

Order To Show Cause and Consolidating Renewal Application for Foreign Air Carrier Permit

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of October 1967.

In the matter of the foreign air carrier permit authority of ALITALIA-LINEE AEREE ITALIANE, S.p.A., Docket 19103; application of ALITALIA-LINEE AEREE ITALIANE, S.p.A., for renewal of its foreign air carrier permit, Docket 18603.

Alitalia-Linee Aeree Italiane, S.p.A. (Alitalia), holds a foreign air carrier permit[1] authorizing it to engage in foreign air transportation with respect to persons, property, and mail as follows:

1. Between a point or points in Italy, intermediate points in France, England, Ireland, Portugal, and the Azores, the intermediate points Gander, Newfoundland, Canada, and Boston, Mass., and the terminal point New York, N.Y.;

2. Between a point or points in Italy, intermediate points in France, England, Ireland, Portugal, and the Azores, the intermediate points Gander, New Foundland, Canada, and Montreal, Canada, and the terminal point Chicago, Ill.

This authority was granted to Alitalia pursuant to the bilateral Air Transport Agreement entered into between the governments of the United States and Italy, effective February 6, 1948, as amended by exchanges of notes effective March 24, 1950, and August 4, 1960.[2] Although the bilateral does not relate to nonscheduled authority, this permit also authorizes the carrier to engage in charter trips in foreign air transportation.

In addition Alitalia holds a second foreign air carrier permit to engage in foreign air transportation of persons, property, and mail between Lisbon, Portugal, intermediate point or points in the Azores, the intermediate points Gander, Newfoundland, Canada, and Boston, Mass., and the terminal point New York, N.Y., which authority is limited to transportation performed pursuant to a lease agreement between Alitalia and Transportes Aereos Portugueses, S.A.R.L.[3] This authority was awarded without reference to the U.S.-Italian bilateral and will expire by its own terms on June 14, 1969.

The first permit contains an express termination clause which provides, inter alia, that the "permit shall terminate * * * upon the termination or expiration of the Air Transport Agreement between the Government of the United States and the Government of Italy" as above described.

On June 1, 1966, the Government of Italy delivered a Note Verbale to the Government of the United States stating its intention to terminate the agreement pursuant to Article 9 thereof. Article 9 specifies that the effective date of the termination shall be one year after date of receipt of the notice of intention to terminate. Accordingly, the Agreement has terminated.

On May 31, 1967, Alitalia filed an application, without reference to any agreement or understanding between the two countries, requesting renewal pursuant to section 402 of the Federal Aviation Act

[1] Issued pursuant to Order E-20667 and effective on Apr. 8, 1964.
[2] TIAS 1902, 2031, and 4558, respectively.
[3] Issued pursuant to Order E-23820 and effective on June 14, 1966.

of the above described permit issued pursuant to Order E-20667. Such permit authority therefore continues in existence pursuant to section 9(b) of the Administrative Procedure Act.

The Board notes that the Italian government has restricted the frequencies of the three U.S.-flag carriers providing all-cargo aircraft schedules in the United States-Italian market. This restriction was imposed prior to the termination date of the Air Transport Agreement and was, during the life of the bilateral, inconsistent with the provisions thereof governing capacity. The 1967 winter schedules for Alitalia and the U.S. air carriers proposed an increase in capacity to handle United States-Italy traffic. Alitalia plans four additional weekly frequencies over its 1966 winter schedules. Pan American and Seaboard World each proposed one additional weekly cargo frequency over its 1966 winter schedule; TWA proposed one less weekly cargo frequency than its 1966 winter schedule. Notwithstanding the substantial increase in air cargo traffic for the 12 months ended April 1967, and the increase in Alitalia's frequencies, the Italian aviation officials have rejected the additional weekly frequencies proposed by Pan American and Seaboard World.

The Board further notes that by Note Verbale dated May 24, 1967, the Italian Government advised the U.S. Government that the U.S. scheduled flag carriers authorized by the Board to operate between the United States and Italy and beyond, as well as via intermediate points, may be authorized to continue to conduct services to Italy pursuant to ad hoc operating rights unilaterally granted by the Italian Government. Under such authorization, U.S.-flag carriers must file their proposed schedules, and the Government of Italy may unilaterally disapprove, reduce, or modify any or all such schedules. Under these circumstances the Government of Italy is free to reduce the access of U.S.-flag scheduled carriers with respect to operations conducted to, from, and through Italy, or to eliminate such operations altogether, while the flag carrier of Italy is in a position to provide schedules without restriction to the same points described in the now terminated bilateral, and to increase frequencies as it sees fit. More specifically, Italy can now approve or disapprove U.S.-flag carriers' schedules including the number of frequencies and effective dates thereof, limit access to traffic at intermediate and beyond points, or otherwise restrict the existing operations of U.S. carriers or prevent the expansion of U.S.-flag services in a manner that would have been inconsistent with the bilateral agreement.

In the past 5 years, 1961 through 1965, inclusive, for which Immigration and Naturalization Service traffic data are available, 501,551 passengers were carried by all U.S.-flag carriers between the United States and Italy on scheduled and nonscheduled flights, whereas the single Italian flag carrier, Alitalia, transported 543,274 passengers. Thus Alitalia carried more passengers in this market than all U.S.-flag carriers combined, despite the fact that more than 67 percent of all passengers in the market were U.S. citizens. Moreover, Alitalia has been rapidly increasing its share of the transatlantic market; it transported better than 386 percent more passengers in 1965 than it did in 1960 and during this period has become the fourth largest foreign transatlantic passenger carrier serving the United States. It is clear that any restriction or reduction of U.S.-flag carrier services to Italy would unbalance the economic benefits available to U.S. carriers in comparison to those available to Alitalia.

In view of the foregoing, the Board tentatively concludes that in the present circumstances and in the absence of a bilateral agreement there is a failure of reciprocity with respect to air transportation between Italy and the United States in that the rights of U.S. carriers are subject to unilateral action or modification by the Italian Government, while the rights of Alitalia, under its existing permits, are not subject to unilateral action or modification by the U.S. Government. To correct this imbalance, the Board tentatively concludes that appropriate conditions should be placed in the permit of Alitalia so as to vest in the U.S. Government authority over Alitalia comparable to that possessed by the Italian Government over U.S. carriers.

Accordingly, the Board has determined to direct Alitalia and other interested persons to show cause by November 1, 1967, why Alitalia's permits should not be amended to permit the Board to require Alitalia to submit its existing and proposed schedules involving services to U.S. points, including on-route charters,[4] to the Board for approval under the procedures set forth herein.[5]

Accordingly, it is ordered, That:

1. Alitalia and any other interested persons be and they are hereby directed to show cause why the Board should not, subject to the approval of the President, amend Alitalia's foreign air carrier permits so as to incorporate the following conditions:

(a) The holder shall, upon order of the Board and within the time specified therein, file with the Board for approval its existing or proposed schedules of service between any point in the United States and any point outside thereof. Such filings shall include all schedules which are or will be operated by such carrier between each pair of points set forth in the order including the type of equipment used or to be used, the time of arrival and departure at each point, the frequency of each schedule, and the effective date of any proposed schedule.

(b) The holder may continue to operate existing schedules and may inaugurate operations under proposed schedules 20 days after the filing thereof unless the Board notifies the holder that such operations or any part thereof, are disapproved. If the notification pertains to a proposed schedule, service thereunder shall not be inaugurated or if the Board so provides may be inaugurated subject to the terms and conditions of the notice. If the notification pertains to an existing schedule, service thereunder shall be discontinued at such time as the Board shall direct, or may be continued subject to such terms and conditions as the Board may provide.

(c) The holder shall, upon order of the Board, file with the Board for approval applications to conduct charter flights over the routes specified in the permit. The holder shall not perform any such charter unless and until it has been approved by the Board.

(d) The Board may take all actions pursuant to (a), (b), and (c) above without hearing and in the Board's sole discretion.

2. Any interested person having objections to the action proposed hereinabove shall file with the Board a memorandum of opposition stating objections supported by evidence within 15 days of service of this order;[6]

3. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions sets forth herein;

4. If timely and properly supported objections are filed, further consideration will be accorded the matters and issues raised by any memoranda in opposition before further action is taken by the Board: *Provided,* That the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein if it determines that there are no factual issues presented which warrant the holding of an evidentiary hearing; and

5. The application of Alitalia in Docket 18608 be and hereby is consolidated into the proceeding on the above order to show cause.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 67-12313; Filed, Oct. 17, 1967; 8:48 a.m.]

[4] Off-route charters of foreign carriers are subject to Board approval under Part 212 of the Economic Regulations.

[5] The Board is not unmindful of the fact that Transportes Aereos Portugueses (TAP) relies upon the services provided by Alitalia under a lease agreement for the conduct of its operations to the United States. The proposed conditions would be included in the section 402 permit under which Alitalia provides such services. However, the situation which gives rise to this order involves only the United States and Italy and is unrelated to the legitimate operating rights of the Portuguese carrier under the United States-Portugal agreement. While the Board would expect to make use of the proposed conditions, if necessary, to prevent Alitalia from circumventing any schedule limitations through unwarranted expansion of its operations under the lease agreement, the Board has no intention of interfering with the carriage by Alitalia of bona fide TAP passengers over the Portuguese route pursuant to the TAP-Alitalia lease agreement.

[6] Since provision is made for response to this order, petitions for reconsideration of this order will not be entertained.

[Docket No. 18650; Order E-25829 [1]]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreement Relating to Specific Commodity Rates

Issued under delegated authority, October 11, 1967.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conferences 3-1 and 1-2-3 of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement, adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated July 20, 1967, as set forth in the attachmet [2] hereto, (1) names rates under new commodity descriptions, (2) names a rate under an existing commodity description, and (3) amends two presently effective commodity descriptions. The new rates reflect reductions ranging from 43.3 to 82.5 percent and are consistent with the present level of specific commodity rates within the applicable areas.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, *Provided,* That approval thereof is conditional as hereinafter ordered.

Accordingly, it is ordered, That: Agreement CAB 19703, R-1 through R-4, R-6, and R-7, be and hereby is approved; however, this approval shall not constitute acceptance of the specific commodity descriptions contained therein for purposes of tariff publication.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 67-12314; Filed, Oct. 17, 1967; 8:48 a.m.]

[1] R-5 was withdrawn by IATA letter dated July 27, 1967.

[2] Filed as part of the original document.

[Docket No. 17828; Order E-25836]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreements Relating to Proportional Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of October 1967.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conference 3-1 of the International Air Transport Association (IATA), and adopted by mail votes. The agreement has been assigned the above-designated CAB Agreement number.

The agreement establishes proportional fares for the purpose of constructing through fares between points within the United States and points in the Far East via the North/Central Pacific. For the most part the proportionals named in the agreement reflect the present local fares, but in some cases the proportional fares are lower.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find Resolution JT31(Mail 132)015b, which is incorporated in the above-designated agreement, to be adverse to the public interest or in violation of the Act.

Accordingly, it is ordered that: Agreement CAB 19831 be approved.

Any air carrier party to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and 19 copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 67-12315; Filed, Oct. 17, 1967; 8:48 a.m.]

[Order E-25837]

INDIRECT AIR CARRIERS OF USED HOUSEHOLD GOODS

Order Granting Temporary Relief

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of October 1967.

At the request of the Department of Defense (DoD), the Board on March 9, 1965, granted temporary relief from certain provisions of the Federal Aviation Act of 1958 to a number of persons who had been operating without Board authorization as indirect air carriers of used household goods, pursuant to DoD contracts (DoD carriers).[1] The relief, which allowed these carriers an opportunity to apply for operating authorizations to engage in indirect air transportation as air freight forwarders of used household goods,[2] was granted upon the condition that such carriers file applications in accordance with the provisions of Part 296 and/or Part 297 of the Board's economic regulations on or before April 15, 1965. Subsequently, the Board granted the same relief to other DoD carriers.[3]

By subsequent orders the Board extended the temporary relief granted in Orders E-21883, E-22079, and E-22269 until October 16, 1967.[4] The Board noted that many of the applications filed by DoD carriers posed policy issues awaiting final resolution by the Board and that DoD had advised the Board that it needed the services of the carriers relieved by the foregoing orders until a final decision is reached with respect to the policy issues raised by their applications.[5]

A notice of proposed rule making dealing with the policy issues posed by these applications has been circulated [6] and extensive comments have been filed in response thereto. It appears that action with respect to the proposed rule making cannot be completed prior to the current expiration date of the temporary relief, nor can processing of the applications filed by DoD carriers be completed prior to that date. Accordingly, we find it in the public interest to extend the relief for these DoD carriers for the reasons given in our previous extension orders.[7]

Accordingly, it is ordered:

1. Pursuant to sections 101(3) and 204 of the Federal Aviation Act of 1958, as

[1] Order E-21883.

[2] The term "used household goods" means personal effects (including unaccompanied baggage) and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, but specifically excludes (1) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments, when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals or other establishments, and (2) objects of art (other than personal effects), displays, and exhibits.

[3] See Orders E-22079, Apr. 26, 1965, and E-22269, June 4, 1965.

[4] See Orders E-22544 and E-23210, E-23639, E-24356, and E-24914, dated Aug. 13, 1965, Feb. 9, May 4, Nov. 3, 1966, and Mar. 29, 1967, respectively.

[5] See Orders E-22185, May 20, 1965, E-22447, July 16, 1965, and E-22496, Aug. 2, 1965.

[6] See EDR-110, dated Jan. 23, 1967, Docket 18126.

[7] Nothing in this order should be construed as a determination of the final disposition to be made of the applications for air freight forwarder authority filed by the carriers relieved by this order. Furthermore, nothing in this order should be construed as an approval of control and interlocking relationships or agreements of the carriers relieved by this order, or their affiliates.

amended, the air freight forwarder applicants listed in Appendix A are hereby relieved from the provisions of Title IV and section 610(a)(4) of the Act from October 16, 1967 through April 15, 1968, or until the date the application for operating authorization is granted, denied, or dismissed, whichever occurs first, to the extent necessary to transport by air used household goods of personnel of the Department of Defense upon tender by the Department;

2. The relief granted in ordering paragraph 1 will not be renewed or extended beyond the termination date of April 15, 1968, for any applicant who has not been granted operating authorization by that date: *Provided,* That the Board may extend such relief in cases in which applicant has been granted additional time to respond to requests for supplemental information necessary to process his application;

3. The transportation services performed pursuant to the authority granted herein do not constitute an activity of a continuing nature within the meaning of section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c);

4. This order may be amended or revoked at any time in the discretion of the Board without hearing; and

5. Copies of this order shall be served on the Military Traffic Management and Terminal Service, U.S. Army, and all persons listed in Appendix A.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

APPENDIX A

Air Van Lines, Inc. (Alaska), 135 North Post Road, Anchorage, Alaska.
Allied Van Lines, Inc., 25th Avenue and Roosevelt Road, Broadview, Ill.
American Ensign Van Service, Inc., 1010 Hawkins Way, El Paso, Tex. 79925.
Asiatic Forwarders, Inc., 3009 16th Street, San Francisco, Calif. 94103.
Container Transport International, Inc., 17 State Street, New York, N.Y. 10004.
Express Forwarding & Storage Co., Inc., 17 State Street, New York, N.Y. 10004.
Fernstrom Storage & Van Co., 5600 North River Road, Rosemont, Ill.
Four Winds Forwarding, Inc., 737 East Artesia Boulevard, Long Beach 5, Calif.
Getz Bros. & Co. (U.S.), 640 Sacramento Street, San Francisco, Calif. 94111.
HC&D Moving & Storage, 800 South Street, Honolulu, Hawaii.
Imperial Household Shipping Co., Inc., Post Office Box 2125, Torrance, Calif. 90509.
International Sea Van, Inc., 1212 St. George Road, Evansville, Ind. 47703.
Lyon Van Lines, Inc., 3416 South LaCienega Boulevard, Los Angeles, Calif. 90016.
Neptune World Wide Moving, Inc., 55 Weyman Avenue, New Rochelle, N.Y.
North American Van Lines, Inc., Post Office Box 988, Fort Wayne, Ind.
Railway Express Agency, Inc., 219 East 42d Street, New York 17, N.Y.
Richardson Transfer & Storage Co., Inc., 246 North Fifth Street, Salina, Kans.
Shamrock Van Lines, Inc., Post Office Box 5447, Dallas 7, Tex.
Smyth Worldwide Movers, Inc., 11616 Aurora Avenue North, Seattle, Wash. 98133.
Suddath Moving & Storage Co., Inc., 315-19 East Bay Street, Jacksonville 2, Fla.
United Van Lines, Inc., 7808 Maplewood Industrial Court, St. Louis 17, Mo.
Von Der Ahe Van Lines, Inc., 600 Rudder Avenue, Fenton, Mo. 63026.
Withers Van Lines of Miami, Inc., 1000 Northeast First Avenue, Miami 36, Fla.

[F.R. Doc. 67-12316; Filed, Oct. 17, 1967; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 17763-17773; FCC 67M-1676]

GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.

Order Scheduling Hearing

In re applications of General Telephone Company of the Northwest, Inc., for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Everett, Wash., Docket No. 17763, File No. 5661-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Deer Creek Flat near Index, Wash., Docket No. 17764, File No. 5662-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Maloney Lookout near Skykomish, Wash., Docket No. 17765, File No. 5663-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Stevens Pass near Scenic, Wash., Docket No. 17766, File No. 5664-C1-P-66; General Telephone Company of the Northwest for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Richland, Wash., Docket No. 17767, File No. 5665-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Sentinel Mountain near Beverly, Wash., Docket No. 17768, File No. 5666-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Quincy, Wash., Docket No. 17769, File No. 5667-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Horselake Mountain near Wenatchee, Wash., Docket No. 17770, File No. 5668-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Miners Ridge near Lake Wenatchee Resort Area, Wash., Docket No. 17771, File No. 5669-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Wenatchee, Wash., Docket No. 17772, File No. 5670-C1-P-66; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Lake Wenatchee near Plain, Wash., Docket No. 17773, File No. 5671-C1-P-66.

It is ordered, That Jay A. Kyle shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on November 21, 1967, at 10 a.m.; and that a prehearing conference shall be held on October 25, 1967, commencing at 9 a.m.; *And, it is further ordered,* That all proceedings shall take place in the offices of the Commission, Washington, D.C.

Issued: October 3, 1967.

Released: October 9, 1967.

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

[F.R. Doc. 67-12322; Filed, Oct. 17, 1967; 8:49 a.m.]

[Docket Nos. 17538-17540; FCC 67M-1726]

LAUREL CABLEVISION CO. ET AL.

Order Scheduling Further Prehearing Conference

In re petitions by Laurel Cablevision Co., Somerset, Pa., Docket No. 17538, File No. CATV 100-24; Punxsutawney TV Cable Co., Inc., Punxsutawney, Pa., Docket No. 17539, File No. CATV 100-155; for authority pursuant to § 74.1107 of the rules to operate CATV systems in the Johnstown-Altoona Television Market and in re application of New York-Penn Microwave Corp., Brockport, Pa., Docket No. 17540, File No. 7793-C1-P-66; for construction permit for new point-to-point microwave radio stations.

Pending Commission disposition of the petition for reconsideration filed by Punxsutawney TV Cable Co., Inc., in this proceeding, *it is ordered:* On the Hearing Examiner's own motion, that the further prehearing conference heretofore scheduled for October 13, 1967 is postponed to November 17, 1967, at 9 a.m., in the offices of the Commission, Washington, D.C.

Issued: October 12, 1967.

Released: October 12, 1967.

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

[F.R. Doc. 67-12323; Filed, Oct. 17, 1967; 8:49 a.m.]

[Docket Nos. 17664, 17752; FCC 67M-1705]

POWERS FERRY AMERICAN AND RUDOLPH G. PAOLUCCI

Order Changing Place of Hearing

In the matter of Rudolph G. Paolucci, doing business as Powers Ferry American; and R. G. Paolucci, Marietta, Ga., Docket No. 17664, order to show cause why the licenses for radio station KMM-2286 in the Citizens Radio Service, radio station KGS-248 in the Business Radio Service and radio station N6123W in the Aviation Radio Service should not be revoked and Rudolph G. Paolucci, 221

Powers Ferry Road, Marietta, Ga., Docket No. 17752, suspension of restricted radiotelephone operator permit.

The Chief Hearing Examiner having under consideration a motion by the Chief, Safety and Special Radio Services Bureau, filed September 28, 1967, that hearings in the Docket 17664 proceeding, which were scheduled originally to commence on October 17, 1967 in the offices of the Commission, Washington, D.C., be continued to mid-November 1967, and rescheduled in Atlanta, Ga.;

It appearing, that by order issued October 10, 1967, Hearing Examiner Herbert Sharfman continued without date the hearing in the Docket 17664 proceeding; and that a date has not been specified for the commencement of hearing in the Docket 17752 proceeding;

It appearing further, that the Bureau Chief's motion for field hearing is supported by a showing of good and sufficient cause, and that public interest will be served by holding hearings in both of these matters in Atlanta, Ga.;

It is ordered, That the motion is granted to the extent that it seeks a field hearing and is otherwise dismissed as moot; and, *it is further ordered,* That the hearing in both dockets shall be convened in Atlanta, Ga., on a date to be later specified.

Issued: October 10, 1967.

Released: October 12, 1967.

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

[F.R. Doc. 67-12324; Filed, Oct. 17, 1967; 8:49 a.m.]

FEDERAL MARITIME COMMISSION

FARRELL LINES, INC., AND SOUTHERN LINE, LTD.

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreement at the office of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Hans Unterwiener, Traffic Manager—Operations, Farrell Lines, Inc., 1 Whitehall Street, New York, N.Y. 10004.

Agreement 9661, between Farrell Lines, Inc., and Southern Line, Ltd., proposes the establishment of a through billing arrangement on general cargo moving in the trade from ports in Sudan to U.S. Atlantic Coast ports with transshipment at Mombasa, Kenya and/or Dar es Salaam, Tanga, or Zanzibar in Tanzania, in accordance with the terms and conditions of the agreement.

Dated: October 13, 1967.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 67-12332; Filed, Oct. 17, 1967; 8:49 a.m.]

BLUE SEA LINE AND BLUE FUNNEL LINE

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the office of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. J. P. McCluskey, Funch, Edye & Co., Inc., 25 Broadway, New York, N.Y. 10004.

Agreement 9660, between Blue Sea Line, a joint service operating under approved Agreement 8529 and Blue Funnel Line, a joint service operating under approved Agreement 7568, establishes a through billing arrangement for the movement of "M.O.P. Shells," in cases, between ports in Western Australia and ports on the Atlantic and Gulf coasts of the United States with transshipment at Singapore, in accordance with the terms set forth therein.

Dated: October 13, 1967.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 67-12333; Filed, Oct. 17, 1967; 8:50 a.m.]

SEA-LAND SERVICE, INC., AND MARINA MERCANTE NICARAGUENSE, S.A.

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the office of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. F. Hiljer, Jr., Commerce Manager, Sea-Land Service, Inc., Terminal and Fleet Streets, Post Office Box 1050, Elizabeth, N.J. 07207.

Agreement 9574-1 between Sea-Land Service, Inc. and Marina Mercante Nicaraguense, S.A., modifies the through billing arrangement under approved Agreement 9574 (which covers movement of controlled temperature cargo from Central American ports to all U.S. East Coast ports and the ports in Puerto Rico with transshipment at Balboa, C.Z.) to eliminate the port of New York, to cover both northbound and southbound service rather than northbound only, to include the carriage of general cargo, and to provide for an equal division of revenue on cargoes other than frozen meat, N.O.S. and frozen shrimp.

Dated: October 13, 1967.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 67-12334; Filed, Oct. 17, 1967; 8:50 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP68-103]

ARKANSAS LOUISIANA GAS CO.

Notice of Application

OCTOBER 10, 1967.

Take notice that on September 29, 1967, Arkansas Louisiana Gas Co. (Applicant), Post Office Box 1734, Shreveport, La. 71102, filed in Docket No. CP68-108 a "budget-type" application pursuant to subsection (c) of section 7

of the Natural Gas Act, as implemented by § 157.7(c) of the regulations under the Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate, during calendar year 1968, various gas sales and transportation facilities for the purpose of enabling Applicant to make minor sales to customers along its pipeline system. Applicant states that sales to any one purchaser through the facilities proposed will not exceed 100,000 Mcf of natural gas annually and will not be used for boiler fuel purposes as defined by the Commission.

The total estimated cost of Applicant's proposed facilities will not exceed $300,000.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 6, 1967.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12271; Filed, Oct. 17, 1967; 8:45 a.m.]

[Docket No. CP68-110]

CITIES SERVICE GAS CO.

Notice of Application

OCTOBER 10, 1967.

Take notice that on October 2, 1967, Cities Service Gas Co. (Applicant), Post Office Box 25128, Oklahoma City, Okla. 73125, filed in Docket No. CP68-110 a "budget-type" application pursuant to subsection (c) of section 7 of the Natural Gas Act, as implemented by § 157.7(c) of the regulations under the Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate, during calendar year 1968, small field compressor units and minor appurtenant facilities including, where necessary, the relocation of such units and appurtenant facilities to enable Applicant to take into its certificated main pipeline system natural gas which it is authorized to purchase from producers thereof.

Applicant states that the total cost of the proposed facilities will not exceed $600,000 and the cost of units for any single producing area will not exceed $250,000, said cost to be financed from treasury funds.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 6, 1967.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12272; Filed, Oct. 17, 1967; 8:45 a.m.]

[Docket No. CP68-114]

COLORADO INTERSTATE GAS CO.

Notice of Application

OCTOBER 11, 1967.

Take notice that on October 4, 1967, Colorado Interstate Gas Co. (Applicant), Post Office Box 1087, Colorado Springs, Colo. 80901, filed in Docket No. CP68-114 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 a meter station for the delivery of natural gas for a "direct sale" to Hill Chemicals, Inc., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate a meter station for a "direct field sale" of natural gas to Hill Chemicals, Inc., in the West Panhandle Field, Hutchinson County, Tex. The natural gas will be used by Hill Chemicals as raw material and as fuel. It is expected that the sale will commence on September 1, 1968.

Applicant estimates the initial requirements of Hill Chemicals to be 38,700 Mcf of natural gas per day at 14.65 p.s.i.a. or 13,545,000 Mcf per year. The initial price for the gas will be 16.75 cents per Mcf with a minimum increase of 17.25 cents per Mcf effective January 1, 1974.

Applicant states that the natural gas delivered and sold to Hill Chemicals will be wholly produced, transported, and consumed within the State of Texas.

The total estimated cost of the proposed facility is $20,592, which cost will be financed out of funds on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washngton, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 6, 1967.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12273; Filed, Oct. 17, 1967; 8:45 a.m.]

[Docket No. CP68-111]

FLORIDA GAS TRANSMISSION CO.

Notice of Application

OCTOBER 10, 1967.

Take notice that on October 2, 1967, Florida Gas Transmission Co. (Applicant), Post Office Box 44, Winter Park, Fla. 32789, filed in Docket No. CP68-111 an application pursuant to subsection (c) of section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and deliveries of volumes of natural gas for resale in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate two line

taps and valves to be located at points on Applicant's 24-inch mainline in Acadia Parish, La., and on its 18-inch East White Lake lateral pipeline in Vermilion Parish, La., respectively, said facilities to be connected with gas receipt facilities to be constructed by Transcontinental Gas Pipe Line Corp. (Transco). Applicant also seeks authorization to sell and deliver to Transco, through the facilities proposed above and pursuant to an agreement between it and Transco dated August 28, 1967, approximately 78 million Mcf of natural gas, said volumes to be delivered between the date the facilities are installed and May 1, 1970. Applicant states that Transco has indicated that it requires the volumes of natural gas to assure an adequate supply to be used in meeting its current growing market requirements. Applicant also states that it has the capacity and available natural gas supply to render the service proposed above and that the rendition of such service will improve Applicant's ability to avoid prepayment obligations in the immediate future.

Applicant estimates the total cost of the facilities proposed at approximately $17,000, said cost to be financed from current funds.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 6, 1967.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12274; Filed, Oct. 17, 1967; 8:45 a.m.]

[Docket No. RI68-68]

GULF OIL CORP.

Order Permitting Withdrawal of Suspended Rate Supplement and Terminating Proceeding

OCTOBER 10, 1967.

On July 31, 1967, Gulf Oil Corp. (Gulf) tendered for filing a proposed rate increase from 16 cents to 17.07 cents per Mcf, designated as Supplement No. 5 to Gulf's FPC Gas Rate Schedule No. 257, for its jurisdictional sales of natural gas from the NW Avard Pool, Woods County, Okla. (Oklahoma "Other" Area) to Panhandle Eastern Pipe Line Co. The Commission by order issued August 18, 1967, in Docket No. RI68-68, suspended the proposed rate increase until February 1, 1968, and thereafter until made effective in the manner prescribed by the Natural Gas Act. The increased rate has not been made effective pursuant to section 4(e) of the Natural Gas Act and no monies have been collected subject to refund under the rate schedule involved.

On September 12, 1967, Gulf submitted a proposed rate increase from 16 cents, plus upward B.t.u. adjustment, to 18.14 cents per Mcf, plus B.t.u. adjustment, under its FPC Gas Rate Schedule No. 257. Gulf requests that the instant notice of change be allowed to supersede the previous filing under the rate schedule involved which is now suspended in Docket No. RI68-68.

Since the proposed 17.07 cents per Mcf rate in Docket No. RI68-68 has not been made effective pursuant to section 4(e) of the Natural Gas Act and no monies have been collected subject to refund under the rate schedule involved, we believe that it would be in the public interest to permit the proposed 18.14 cents rate to supersede the 17.07 cents rate suspended in Docket No. RI68-68; to permit Gulf to withdraw its aforementioned rate supplement, and to terminate the related suspension proceeding in Docket No. RI68-68. The proposed 18.14 cents per Mcf rate is suspended in Docket No. RI68-143 by separate action.

The Commission finds: Good cause exists for permitting the withdrawal of Supplement No. 5 to Gulf's FPC Gas Rate Schedule No. 257, and for terminating the related suspension proceeding in Docket No. RI68-68.

The Commission orders: Supplement No. 5 to Gulf's FPC Gas Rate Schedule No. 257 is permitted to be withdrawn and the suspension proceeding in Docket No. RI68-68 is terminated.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12275; Filed, Oct. 17, 1967; 8:45 a.m.]

[Docket No. CP68-112]

KENTUCKY GAS TRANSMISSION CORP.

Notice of Application

OCTOBER 10, 1967.

Take notice that on October 2, 1967, Kentucky Gas Transmission Corp. (Applicant), Post Office Box 1273, Charleston, W. Va. 25325, filed in Docket No. CP68-112 an application pursuant to subsection (c) of section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate a measuring and regulating station on its 20-inch transmission line in Mason County, Ky., to provide a new and additional point of delivery of natural gas to Columbia Gas of Kentucky, Inc. (Kentucky), an existing resale customer, for resale and distribution in the city of Germantown, Ky. Applicant states that the additional volumes of natural gas required for the service proposed by Kentucky are to be taken from amounts previously authorized for delivery to Kentucky.

Applicant estimates the total cost of the proposed facilities at approximately $9,300, said cost to be paid from cash on hand.

Protests or petitions to intervene may be filed with the Federal Power Comission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 6, 1967.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12276; Filed, Oct. 17, 1967; 8:45 a.m.]

[Docket No. CP68-118]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

OCTOBER 11, 1967.

Take notice that on October 6, 1967, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Ill. 60603, filed in Docket No. CP68-118 a "budget-type" application pursuant to subsection (c) of section 7 of the Natural Gas Act, as implemented by § 157.7(b) of the regulations under the Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate, during calendar year 1968, various natural gas purchase facilities including meter stations, lateral pipelines and taps, to enable it to contract for and take into its certificated main pipeline system natural gas which is or will become available from producers thereof.

The total estimated cost of Applicant's proposed facilities will not exceed $2 million, with no single project to exceed a cost of $500,000, said cost to be financed from funds on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 10, 1967.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12277; Filed, Oct. 17, 1967; 8:46 a.m.]

[Docket No. CP68-117]

NORTHERN NATURAL GAS CO.

Notice of Application

OCTOBER 11, 1967.

Take notice that on October 5, 1967, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. CP68-117 a "budget-type" application pursuant to subsection (c) of section 7 of the Natural Gas Act, as implemented by § 157.7(c) of the regulations under the Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate, during calendar year 1968, various natural gas sales and transportation facilities and the rearrangement of certain existing natural gas facilities for the direct sale of natural gas through its Peoples Division and the sale for resale of volumes of natural gas to existing distributors. Applicant states that firm volumes to be delivered will be provided from the existing contract demand of the distributor involved or from capacity of the existing pipeline facilities in areas where contract demand rate schedules are not applicable. Applicant further states that the deliveries to any one distributor through the facilities proposed will not exceed 100,000 Mcf annually and will not be used for boiler fuel as defined by the Commission.

The estimated cost of the facilities proposed by Applicant is not to exceed $300,000, said cost to be financed from cash on hand and from funds generated from operations. Applicant states that it is its policy to require distributors, including its Peoples Division, to make a contribution for the cost of constructing measuring and regulating facilities and appurtenances where no additional contract demand is being purchased by such distributors and it therefore requests that the Commission waive the provisions of § 157.7(c)(1)(i) of the regulations under the Act.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 10, 1967.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12278; Filed, Oct. 17, 1967; 8:46 a.m.]

[Docket No. CP68-109]

NORTHERN NATURAL GAS CO. AND CITIES SERVICE GAS CO.

Notice of Application

OCTOBER 10, 1967.

Take notice that on September 29, 1967, Northern Natural Gas Co., Peoples Natural Gas Division (Applicant), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. CP68-109 an application purusant to subsection (a) of section 7 of the Natural Gas Act for an order of the Commission directing Cities Service Gas Co. (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in and around the community of Pacific, Franklin County, Mo., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate a municipal natural gas distribution system in the city of Pacific. Applicant also proposes that Respondent construct a transmission line connecting its pipeline facilities with the distribution system proposed by Applicant, together with a measuring station and any necessary related facilities. Applicant estimates the third year peak daily and annual natural gas requirements of Pacific at 1,606 Mcf and 232,277 Mcf, respectively.

Applicant estimates the third year cost of the facilities proposed at approximately $352,238, said cost to be financed from internal sources such as reserve accruals, retained earnings and cash on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 6, 1967.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12279; Filed, Oct. 17, 1967; 8:46 a.m.]

[Docket Nos. CS68-26 etc.]

NORWOOD OIL CO. ET AL.

Notice of Applications for "Small Producer" Certificates [1]

OCTOBER 11, 1967.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of Texas and New Mexico, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 3, 1967.

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

[1] This notice does not provide for consolidation for hearing of the several matters covered herein, nor should it be so construed.

Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

Docket No.	Date filed	Name of applicant
CS68-26	8-23-67	Norwood Oil Co. and/or Norwood Drilling Co., 4726 Jacksboro Highway, Wichita Falls, Tex. 76301.
CS68-32	9-19-67	R. W. Carter, 1316-58th Pl., Lubbock, Tex. 79412.
CS68-33	9-19-67	Patricia Ruth Carter Hart, 5502 Ave. T, Lubbock, Tex. 79412.

[F.R. Doc. 67-12280; Filed, Oct. 17, 1967; 8:46 a.m.]

[Docket No. CP66-244]

PANHANDLE EASTERN PIPE LINE CO.

Notice of Petition To Amend

OCTOBER 10, 1967.

Take notice that on October 3, 1967, Panhandle Eastern Pipe Line Co. (Petitioner), 1 Chase Manhattan Plaza, New York, N.Y. 10005, filed in Docket No. CP66-244 a petition to amend the order issued in said docket on June 6, 1966, 35 FPC 896, by authorizing the increase in summer contract demand for the village of Westville, Ill., all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the village of Westville has found that its current contract nominations are insufficient to cover its current estimates of its requirements. Accordingly, Petitioner requests authorization to increase the maximum daily delivery obligation to 2,200 Mcf of natural gas per day.

Petitioner states that no additional facilities are needed to effectuate the increased deliveries.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 8, 1967.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12281; Filed, Oct. 17, 1967; 8:46 a.m.]

[Project No. 2658]

PUBLIC UTILITY DISTRICT NO. 1 OF COWLITZ COUNTY, WASH.

Notice of Application for Preliminary Permit for Unconstructed Project

OCTOBER 10, 1967.

Public notice is hereby given that application for preliminary permit has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Public Utility District No. 1 of Cowlitz County, Wash. (correspondence to: Fred C. Huson, President, Public Utility District No. 1 of Cowlitz County, 960 Commerce Avenue, Longview, Wash. 98632) for unconstructed Project No. 2658, to be known as Merrill Lake pumped-storage project, located at the outlet of Merrill Lake, a natural lake within Kalama River Basin, and at Yale Lake above Yale Dam on Lewis River.

The proposed project would consist of: (1) An earthfill dam about 1,200 feet long at the outlet of Merrill Lake to raise the lake elevation about 60 feet (Elevation 1,541 to 1,601, U.S.G.S.) and to form the upper pool; (2) a chute spillway at one end of Merrill Lake embankment; (3) an intake structure, with about 7,000 feet of underground pressure tunnel and penstock (about 20 feet in diameter) leading to a surge tank and thence to an underground powerhouse; (4) an underground powerhouse having two generator-motor units with a total capacity of 500,000 kw; (5) a 2,700-foot underground tailrace tunnel, about 26 feet in diameter, and an excavated channel to Yale Lake which would serve as the lower pondage; and (6) appurtenant facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is November 29, 1967. The application is on file with the Commission for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12282; Filed, Oct. 17, 1967; 8:46 a.m.]

[Docket No. CP67-168]

SOUTHERN NATURAL GAS CO.

Notice of Petition To Amend

OCTOBER 11, 1967.

Take notice that on October 2, 1967, Southern Natural Gas Co. (Petitioner), Post Office Box 2563, Birmingham, Ala. 35202, filed in Docket No. CP67-168 a petition to amend the order issued by the Commission August 31, 1967, by authorizing Petitioner to increase the sale and delivery of volumes of natural gas to an existing resale customer, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the above-mentioned order, Petitioner was authorized, inter alia, to sell and deliver to the town of Trion, Ga. (Trion), a Maximum Delivery Obligation of 1,250 Mcf per day of natural gas. By the instant filing, Petitioner seeks authorization to increase the Maximum Delivery Obligation to Trion to 1,575 Mcf per day of natural gas. Petitioner states that Trion has indicated that it proposes to add new customers and meet the increased requirements of an existing customer. Petitioner further states that no new or additional facilities are or will be required to render the service proposed above.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 6, 1967.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12283; Filed, Oct. 17, 1967; 8:46 a.m.]

[Docket No. CP68-115]

SOUTHERN NATURAL GAS CO.

Notice of Application

OCTOBER 11, 1967.

Take notice that on October 4, 1967, Southern Natural Gas Co. (Applicant), Post Office Box 2563, Birmingham, Ala. 35202, filed in Docket No. CP68-115 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 certain facilities for the transportation and sale of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate approximately 5.3 miles of 26-inch loop pipeline between mile post 12.557 and mile post 17.9 on Applicant's Lake Washington supply line in Plaquemines Parish, La. Applicant states that such construction will enable it to transport to the Toca compressor station, on the east leg of its South Louisiana Supply System, increased volumes of gas from fields presently connected to the Lake Washington supply line and from fields which shortly will be connected to such line as a result of the execution of gas purchase contracts covering additional gas supplies in this area.

The total estimated cost of the proposed facilities is $1,309,310, which cost will be defrayed from cash on hand or from current operations.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 8, 1967.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Fed-

eral 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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12284; Filed, Oct. 17, 1967; 8:46 a.m.]

[Docket No. CP68-116]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

OCTOBER 11, 1967.

Take notice that on October 5, 1967, Transcontinental Gas Pipe Line Corp. (Applicant), Post Office Box 1396, Houston, Tex. 77001, filed in Docket No. CP68-116 an application pursuant to subsection (c) of section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate the following natural gas facilities:

(1) A purchase meter station at mile post 7.80 on its Central Louisiana Lateral where it intersects the Florida Gas Transmision Co. (Florida) 24-inch mainline, Acadia Parish, La.; and

(2) A purchase meter station at mile post 47.00 on its Central Louisiana Lateral where it intersects the Florida 18-inch East White Lake lateral pipeline, Vermilion Parish, La.

Applicant states that the facilities proposed above are required to enable it to receive volumes of natural gas from Florida, pursuant to an agreement between Applicant and Florida, until May 1, 1970.

Applicant estimates the total cost of the facilities proposed at approximately $166,000, said cost to be financed with available company funds.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 10, 1967.

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 without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12285; Filed, Oct. 17, 1967; 8:46 a.m.]

OFFICE OF EMERGENCY PLANNING

TEXAS

Amendment to Notice of Major Disaster

Notice of major disaster for the State of Texas, dated October 2, 1967, and published October 7, 1967 (32 F.R. 14005), and amended October 9, 1967, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 28, 1967:

La Salle. Matagorda.

Dated: October 11, 1967.

PRICE DANIEL,
Director,
Office of Emergency Planning.

[F.R. Doc. 67-12326; Filed, Oct. 17, 1967; 8:49 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[812-2196]

AXE-HOUGHTON FUND A, INC.

Notice of Filing of Application for Order Exempting Proposed Transaction

OCTOBER 12, 1967.

Notice is hereby given that Axe-Houghton Fund A, Inc. ("applicant") 400 Benedict Avenue, Tarrytown, N.Y., an open-end diversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 17(b), or in the alternative section 6(c), of the Act requesting an order of the Commission exempting from the prohibitions of section 17(a) of the Act the proposed conversion by applicant of shares of Cumulative Convertible Prior Preference Stock of Austin, Nichols & Co., Inc. ("Austin, Nichols") into shares of Common Stock of Austin, Nichols. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below:

Austin, Nichols is a Virginia corporation engaged primarily in the business of importing and distributing wines and liquors and blending and rectifying alcoholic products. It has two authorized classes of capital stock, both listed on the New York Stock Exchange: Common stock, $1 par value ("Common Stock"), of which 654,681 shares were outstanding on July 31, 1967, and $1.20 Cumulative Convertible Prior Preference Stock, $20 par value ("Preference Stock"), of which 19,933 were outstanding on such date. Each share of Preference Stock is presently convertible into 2.397021 shares of Common Stock. Each share of Common Stock is entitled to one vote and each four shares of Preference Stock are entitled to one vote.

Applicant holds 51,291 shares of Common Stock (representing 7.8 percent of the shares of such class outstanding as of July 31, 1967) and 3,100 shares of Preference Stock (representing 15.6 percent of the shares of such class outstanding as of such date). These shares represent approximately 7.9 percent of the combined voting power of the Common Stock and Preference Stock outstanding as of July 31, 1967, and approximately 8.4 percent of the voting power as of such date after giving effect to the conversion of all Preference Stock outstanding on such date. Austin, Nichols is thus an affiliated person of applicant, as applicant owns more than 5 percent of its voting securities.

Austin, Nichols has called all of the outstanding shares of Preference Stock for redemption on November 1, 1967, at a redemption price of $20.30 per share. The closing bid and asked prices of the Preference Stock on the New York Stock Exchange on October 3, 1967, were 62½ and 66½, respectively. The closing price of the Common Stock on such Exchange on that date, as so reported, was 27¼ (representing approximately $65.40 per share of Preference Stock on a converted basis).

On July 17, 1967, applicant entered into a stock purchase agreement providing for the sale to Fifth Avenue Coach Lines, Inc. ("Fifth Avenue Coach"), of all of applicant's shares of Common Stock at a price of $35 per share and Preference Stock at a price equal to $35 times the number of shares of Common Stock into which one share of Preference Stock is convertible. On August 7, 1967, Fifth Avenue Coach, applicant and certain other holders of Common Stock and Preference Stock filed an application

with the Commission for an order exempting the proposed purchase of Common Stock and Preference Stock by Fifth Avenue Coach from the provisions of section 17 of the Act. On September 29, 1967, the Commission issued a notice of and order for hearing on such application (Investment Company Act Release No. 5115), to be held on October 16, 1967. The stock purchase agreement provides that Fifth Avenue Coach and applicant shall be released from their obligations thereunder if the exemption order requested in such application has not been issued on or before October 17, 1967, unless Fifth Avenue Coach and applicant agree to a postponement of the closing under the agreement. If the closing date is so postponed, applicant will not be free to sell its Preference Stock on the market, and if such order has not been issued before November 1, 1967, applicant will be forced to convert its holdings of Preference Stock into Common Stock in order to avoid the loss that would result from redemption of such Preference Stock.

Applicant submits that the terms upon which the shares of Preference Stock are convertible into Common Stock are fair and reasonable. The redemption price at which the shares of Preference Stock may be redeemed and the number of shares of Common Stock into which shares of Preference Stock may be converted are each fixed by the certificate of incorporation of Austin, Nichols. The market value (as of Oct. 3, 1967) of the shares of Common Stock presently receivable upon conversion of each share of Preference Stock is approximately $65.40, as compared with the redemption price of $20.30 per share which would be received upon redemption if such shares were not converted prior to November 1, 1967. Applicant also asserts that the proposed transaction is consistent with its investment policy as recited in its registration statement and reports filed under the Act, that the proposed transaction is consistent with the general purposes of the Act, and that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

With certain exceptions, section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling to, or purchasing from, such company any security or other property, unless the Commission finds, upon application under section 17(b) of the Act, that the terms of the proposed transaction are reasonable and fair and do not involve overreaching and that the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than October 30, 1967, at 12:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in such application, unless an order for hearing shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-12289; Filed, Oct. 17, 1967; 8:47 a.m.]

CODITRON CORP.

Order Suspending Trading

OCTOBER 12, 1967.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $3 par value, of Coditron Corp., New York, N.Y., otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period October 13, 1967, through October 22, 1967, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-12290; Filed, Oct. 17, 1967; 8:47 a.m.]

SUBSCRIPTION TELEVISION, INC.

Order Suspending Trading

OCTOBER 12, 1967.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $1 par value of Subscription Television, Inc., New York, N.Y., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period October 13, 1967, through October 22, 1967, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-12291; Filed, Oct. 17, 1967; 8:47 a.m.]

[70-4543]

WISCONSIN GAS CO.

Notice of Proposed Issue and Sale of Short-Term Notes to Banks

OCTOBER 12, 1967.

Notice is hereby given that Wisconsin Gas Co. ("Wisconsin"), 626 East Wisconsin Avenue, Milwaukee, Wis. 53201, a gas utility subsidiary company of American Natural Gas Co., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 and 7 of the Act as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Wisconsin proposes to issue, from time to time commencing in December 1967, and in varying amounts as funds are required, unsecured promissory notes to banks in an aggregate principal amount not to exceed $15 million outstanding at any one time. The notes will be dated when issued, will mature November 30, 1968, and will bear interest at the prime rate in effect at First National City Bank, New York, N.Y. (presently 5½ percent per annum) on the date of issue. The interest rate will be adjusted to the prime rate in effect at such bank at the beginning of each 90-day period subsequent to the date of the first borrowing. The proposed notes may be prepaid at any time without penalty.

Shown below are the maximum principal amounts proposed to be outstanding with the designated banks:

First National City Bank, New York, N.Y.	$5,000,000
First Wisconsin National Bank of Milwaukee, Wis.	4,500,000
Marshall & Ilsley Bank, Milwaukee, Wis.	2,500,000
Manufacturers Hanover Trust Co., New York, N.Y.	1,500,000
Marine National Exchange Bank, Milwaukee, Wis.	1,500,000
Total	15,000,000

The proceeds from the proposed notes will be applied by Wisconsin to its construction costs, estimated at $15,850,000 for 1967. Prior to issue of the proposed notes, Wisconsin expects to issue short-term notes to banks pursuant to the exemption contained in the first sentence of section 6(b) of the Act to finance partially its 1967 construction program. Notes issued for this purpose will be repaid from the proceeds of the proposed notes.

Wisconsin will apply the net proceeds from any permanent debt financing effected prior to the maturity of the proposed notes in reduction of or in total payment of such outstanding notes, and the amount of any of such notes that may be permitted to be issued under this declaration will be reduced by the amount of the net proceeds of any such permanent debt financing.

Fees and expenses in connection with the proposed note issues are estimated at $1,050, consisting of $550 for legal fees and $500 for miscellaneous expenses including the amount expected to be paid to American Natural Gas Service Co., an associate service company. The filing states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 13, 1967, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-12292; Filed, Oct. 17, 1967; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 468]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

OCTOBER 13, 1967.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's Deviation Rules Revised, 1957 (49 CFR 211.1 (c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 730 (Deviation No. 31), PACIFIC INTERMOUNTAIN EXPRESS CO., 1417 Clay Street, Post Office Box 958, Oakland, Calif. 94604, filed October 4, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Akron, Ohio, over Interstate Highway 80S to junction Interstate Highway 80 west of Youngstown, Ohio, thence over Interstate Highway 80 to New York, N.Y., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) Akron, Ohio, over Ohio Highway 18 to Youngstown, Ohio, thence over U.S. Highway 422 to junction unnumbered highway (formerly portion U.S. Highway 422), thence over unnumbered highway via Coyleville and Worthington, Pa., to junction U.S. Highway 422, thence over U.S. Highway 422 to Ebensburg, Pa., thence over U.S. Highway 22 to Phillipsburg, N.J., thence over Alternate U.S. Highway 22 to junction unnumbered highway (formerly portion U.S. Highway 22), thence over unnumbered highway via Bloomsbury, N.J., to junction U.S. Highway 22 west of West Portal, N.J., thence over U.S. Highway 22 to junction unnumbered highway (formerly portion U.S. Highway 22), thence over unnumbered highway via Clinton and Annandale, N.J., to junction U.S. Highway 22, thence over U.S. Highway 22 to junction unnumbered highway (formerly portion U.S. Highway 22), thence over unnumbered highway via Lebanon, N.J., to junction U.S. Highway 22, thence over U.S. Highway 22 to junction New Jersey Highway 28, thence over New Jersey Highway 28 via North Branch, N.J., to junction U.S. Highway 22, thence over U.S. Highway 22 to Newark, N.J., thence over U.S. Highway 1 via Stratford, Conn., to New Haven, Conn., thence over U.S. Highway 5 to Hartford, Conn. (also from Stratford over Connecticut Highway 110 to junction Connecticut Highway 8, thence over Connecticut Highway 8 via Waterbury, Conn., to Thomaston, Conn., thence over U.S. Highway 6 via Bristol, Conn., to junction Connecticut Highway 71; also from Waterbury over Alternate U.S. Highway 6 to Mediden, Conn., thence over Connecticut Highway 71 to New Britain, Conn.; and from Bristol over Connecticut Highway 72 to New Britain; thence over Connecticut Highway 71 to junction U.S. Highway 6, thence from junction Connecticut Highway 71 and U.S. Highway 6 over U.S. Highway 6 to Hartford), and (2) from Albany, N.Y., over U.S. Highway 9 to New York, N.Y. (also from Albany over U.S. Highway 9W to Jersey City, N.J., thence over U.S. Highway 1 to New York, N.Y.), and return over the same routes.

No. MC 1124 (Deviation No. 25), HERRIN TRANSPORTATION COMPANY, Post Office Box 1140, Houston, Tex. 77001, filed June 27, 1967, amended September 21, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Dallas, Tex., and Shreveport, La., over Interstate Highway 20, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Dallas, Tex., over U.S. Highway 75 to Corsicana, Tex., thence over Texas Highway 31 to Athens, Tex., thence over U.S. Highway 175 to Jacksonville, Tex., thence over U.S. Highway 69 to Lufkin, Tex., thence over U.S. Highway 59 to Teneha, Tex., thence over U.S. Highway 84 to Logansport, La., thence over Louisiana Highway 5 to Gloster, La., thence over U.S. Highway 171 to Shreveport, La., and return over the same route.

No. MC 1124 (Deviation No. 26), HERRIN TRANSPORTATION COMPANY, Post Office Box 1140, Houston, Tex. 77001, filed September 5, 1967, amended September 25, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Memphis, Tenn., over U.S. Highway 72 to junction Alternate U.S. Highway 72, thence over Alternate U.S. Highway 72 to junction Alabama Highway 67, at or near Decatur, Ala., thence over Alabama Highway 67 to

junction U.S. Highway 278, thence over U.S. Highway 278 to Atlanta, Ga., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Memphis, Tenn., over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 280 to Richland, Ga., thence over Georgia Highway 55 to Dawson, Ga., thence over U.S. Highway 82 to Waycross, Ga., thence over U.S. Highway 23 to Jacksonville, Fla., and (2) from Columbus, Ga., over U.S. Highway 80 to Savannah, Ga., and return over the same routes.

No. MC 1124 (Deviation No. 27), HERRIN TRANSPORTATION COMPANY, Post Office Box 1440, Houston, Tex. 77001, filed September 5, 1967, amended September 25, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Geneva, Ga., over Georgia Highway 96 to junction Georgia Highway 137 at or near Butler, Ga., thence over Georgia Highway 137 to Roberta, Ga., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: Between Columbus, Ga., and Savannah, Ga., over U.S. Highway 80.

No. MC 35334 (Deviation No. 6), COOPER-JARRETT, INC., 23 South Essex Avenue, Orange, N.J. 07051, filed October 2, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Wheeling, W. Va., over Interstate Highway 70 to junction Interstate Highway 79, thence over Interstate Highway 79 to Erie, Pa., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From Wheeling, W. Va., across the Ohio River to Bridgeport, Ohio, thence over Ohio Highway 7 to Youngstown, Ohio, thence over U.S. Highway 422 to Warren, Ohio, thence over Ohio Highway 82 to Mantua Corners, Ohio, thence over Ohio Highway 44 via Chardon, Ohio to Painesville, Ohio, thence over U.S. Highway 20 via Willoughby, Ohio, to Cleveland, Ohio, and (2) from Cleveland, Ohio, over Ohio Highway 283 to junction Ohio Highway 640, thence over Ohio Highway 640 to Willoughby, Ohio, thence over U.S. Highway 20 to Kirtland Hills, Ohio, thence over Ohio Highway 84 to junction Ohio Highway 534, thence over Ohio Highway 534 to Geneva, Ohio, thence over U.S. Highway 20 to Silver Creek, N.Y., thence over New York Highway 5 to Buffalo, N.Y., thence over New York Highway 384 to Niagara Falls, N.Y., and return over the same routes.

No. MC 35334 (Deviation No. 7) COOPER-JARRETT, INC., 23 South Essex Avenue, Orange, N.J. 07051, filed October 2, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Columbus, Ohio, and Cincinnati, Ohio, over Interstate Highway 71, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Columbus, Ohio, over U.S. Highway 62 to Washington Court House, Ohio, (2) from Pittsburgh, Pa., over U.S. Highway 19 to Washington, Pa., thence over U.S. Highway 40 to Zanesville, Ohio, thence over U.S. Highway 22 to Cincinnati, Ohio, and (3) from Zanesville, Ohio, over U.S. Highway 40 to junction U.S. Highway 25, thence over U.S. Highway 25 to Cincinnati, Ohio, and return over the same routes.

No. MC 39395 (Deviation No. 1), NEHALEM VALLEY MOTOR FREIGHT, INC., 3641 Northwest St. Helens Road, Portland, Oreg. 97210, filed September 29, 1967. Carrier's representative: Robert R. Hollis, Commonwealth Building, Portland, Oreg. 97204. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Portland, Oreg., over Interstate Highway 5 to Longview, Wash., thence over Washington Highway 833 across the Columbia River to junction U.S. Highway 30 at or near Rainier, Oreg., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Portland, Oreg., over U.S. Highway 30 to Astoria, Oreg., thence over U.S. Highway 101 to Seaside, Oreg., and return over the same route.

No. MC 106943 (Deviation No. 10), EASTERN EXPRESS, INC., 1450 Wabash Avenue, Terre Haute, Ind. 47808, filed October 2, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Joliet, Ill., over Interstate Highway 80 to junction Interstate Highway 80S to Agallala, Nebr., thence over Interstate Highway 80S to Denver, Colo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Joliet, Ill., over Alternate U.S. Highway 66 to junction U.S. Highway 66, thence over U.S. Highway 66 to Springfield, Ill., thence over U.S. Highway 36 to junction U.S. Highway 54, thence over U.S. Highway 54 to junction Interstate Highway 70 at Kingdom City, Mo., thence over Interstate Highway 70 to Denver, Colo., and return over the same routes.

No. MC 108859 (Deviation No. 5), CLAIRMONT TRANSFER CO., 1803 Seventh Avenue North, Escanaba, Mich. 49829, filed October 6, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Over connecting streets and highways in the Chicago, Ill., commercial zone, to U.S. Highway 12, thence east over U.S. Highway 12 to junction Interstate Highway 94 near New Buffalo, Mich., thence over Interstate Highway 94 to junction U.S. Highway 127 near Jackson, Mich., thence over U.S. Highway 127 to Lansing, Mich., thence north over U.S. Highway 27 to junction Interstate Highway 75 near Clare, Mich., thence over Interstate Highway 75 to Sault Ste. Marie, Mich., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Chicago, Ill., over Illinois Highway 42 to Illinois-Wisconsin State line, thence over Wisconsin Highway 32 to junction Wisconsin Highway 100, thence over Wisconsin Highway 100 to junction Milwaukee County Trunk H, thence over Milwaukee County Trunk H to junction Milwaukee County Trunk Y, thence over Milwaukee County Trunk Y to Cudahy, Wis., thence over Milwaukee County Trunk Highway AA to Milwaukee, Wis., thence over Milwaukee County Trunk Highway D to junction Wisconsin Highway 57, thence over Wisconsin Highway 57 to junction Wisconsin Highway 23, thence over Wisconsin Highway 23 to Plymouth, Wis., thence over Wisconsin Highway 67 to Kiel, Wis., thence over Wisconsin Highway 57 via Chilton to Green Bay, Wis., thence over U.S. Highway 41 via Menominee, Mich., to Escanaba, Mich., thence continuing over U.S. Highway 41 to Rapid River, Mich., thence over U.S. Highway 2 to Isabella, Mich., and (2) from Isabella, Mich., over U.S. Highway 2 to Sault Ste. Marie, Mich., and return over the same routes.

No. MC 1515 (Deviation No. 403) (Cancels Deviation No. 299) GREYHOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, Ohio 44113, filed September 25, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over deviation route as follows: (1) From Detroit, Mich., over Interstate Highway 75 to junction Ohio Highway 582, thence over Ohio Highway 582 to junction U.S. Highway 25, (2) from junction Interstate Highway 75 and access highway to U.S. Highway 24 (near Southgate, Mich.), over access highway to U.S. Highway 24, thence over U.S. Highway 24 to junction Interstate Highway 94, thence over Interstate Highway 94 to Detroit, Mich., (3) from Monroe, Mich., over city streets to Interstate Highway 75, (4) from Toledo, Ohio, over city streets to Interstate Highway 75, (5) from Toledo, Ohio, over U.S. Highway 24 to junction Interstate Highway 475, thence over Interstate Highway 475 to junction Interstate Highway 75, (6) from junction Ohio Highways 51, 120 and Interstate Highway 280 over Interstate Highway 280 to junction Interstate Highway 75, and (7) from Perrysburg, Ohio, over city streets to Interstate Highway 75, and return over the same routes, for operating convenience

only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over pertinent service routes as follows: (1) From Port Austin, Mich., over U.S. Highway 25 via Port Huron, Mount Clemens, and Monroe, Mich., and Toledo, Perrysburg, and Findlay, Ohio, to Dayton, Ohio, also from Mount Clemens over Mount Clemens Drive and Harper Avenue to Detroit, thence over city streets via River Rouge, Ecorse, Wyandotte, and Trenton, Mich., to junction County Highway 379, thence over County Highway 379 to Rockwood, Mich., thence over Michigan Highway 56 to Monroe, Mich., thence over Michigan Highway 50 to junction U.S. Highway 24, also from junction U.S. Highways 25 and 24, 5 miles north of Monroe over U.S. Highway 24 to Toledo, Ohio, (2) from Toledo, Ohio, over Ohio Highway 51 to junction U.S. Highway 20, thence over U.S. Highway 20 to junction Ohio Highway 10, at a point approximately half a mile south of Kipton, Ohio, thence over Ohio Highway 10 to junction U.S. Highway 20, thence over U.S. Highway 20 to Cleveland, Ohio, and (3) from Toledo, Ohio, over Ohio Highway 120 to Stoney Ridge Toledo Interchange (Ohio Turnpike) and return over the same routes.

No. MC 1515 (Deviation No. 405), GREYHOUND LINES, INC. (Western Division), Market and Fremont Streets, San Francisco, Calif. 94106, filed September 29, 1967. Carrier's representative: W. T. Meinhold, 271 Market Street, San Francisco, Calif. 94105. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express, and newspapers* in the same vehicle with passengers, over deviation routes as follows: (1) From junction U.S. Highway 10 and Interstate Highway 90 (West Cle Elum Junction, Wash.), over Interstate Highway 90 to Cle Elum, Wash., (2) from Cle Elum, Wash., over Interstate Highway 90 to junction unnumbered highway (West Ellensburg Junction), thence over unnumbered highway to Ellensburg, Wash., and (3) from junction U.S. Highway 10 and Interstate Highway 90 (West Cle Elum Junction), over Interstate Highway 90 to junction unnumbered highway (West Ellensburg Junction), thence over unnumbered highway to Ellensburg, Wash., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: Between Seattle, Wash., and Ellensburg, Wash., over U.S. Highway 10.

No. MC 1515 (Deviation No. 406), GREYHOUND LINES, INC. (Western Division), Market and Fremont Streets, San Francisco, Calif. 94106, filed October 3, 1967. Carrier's representative: W. T. Meinhold, 271 Market Street, San Francisco, Calif. 94105. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, over a deviation route as follows: From junction California Highway 86 and Interstate Highway 8 (El Centro), over Interstate Highway 8 to junction California Highway 111 (East El Centro Junction), thence over California Highway 111 to junction California Highway 86 (East Heber Junction), and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From El Centro, Calif., over California Highway 86 to junction California Highway 111, thence over California Highway 111 to Calexico, Calif., thence over California Highway 98 to junction U.S. Highway 80 (Midway Well), and return over the same route.

No. MC 1515 (Deviation No. 407) (Cancels Deviation No. 348), GREYHOUND LINES, INC. (Southern Division), 219 East Short Street, Lexington, Ky. 40507, filed October 6, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over pertinent service routes as follows: (1) From junction U.S. Highway 25 and Interstate Highway 75 at or near Covington, Ky., over Interstate Highway 75 to junction Kentucky Highway 1505 (near Conway, Ky.), thence over Kentucky Highway 1505 to junction U.S. Highway 25 with the following access routes: (a) From junction Interstate Highway 75 and Kentucky Highway 338 over Kentucky Highway 338 to Richwood, Ky., (b) from junction Interstate Highway 75 and Kentucky Highways 14–16 over Kentucky Highways 14–16 to Walton, Ky., (c) from junction Interstate Highway 75 and Kentucky Highway 491 over Kentucky Highway 491 to Crittenden, Ky., (d) from junction Interstate Highway 75 and Kentucky Highway 22 over Kentucky Highway 22 to Dry Ridge, Ky., (e) from junction Interstate Highway 75 and Kentucky Highway 36 over Kentucky Highway 36 to Williamstown, Ky., (f) from junction Interstate Highway 75 and Kentucky Highway 1032 over Kentucky Highway 1032 to Corinth, Ky., (g) from junction Interstate Highway 75 and U.S. Highway 62 over U.S. Highway 62 to Georgetown, Ky., (h) from junction Interstate Highway 75 and Kentucky Highway 922 over Kentucky Highway 922 to Lexington, Ky., (i) from junction Interstate Highway 75 and Kentucky Highway 169 over Kentucky Highway 169 to Richmond, Ky., (j) from junction Interstate Highway 75 and Kentucky Highway 595 over Kentucky Highway 595 to Berea, Ky., and (k) from junction Interstate Highway 75 and Kentucky Highway 21 over Kentucky Highway 21 to junction U.S. Highway 25, and (2) from junction U.S. Highway 25 and Interstate Highway 75 near Clio, Ky., over Interstate Highway 75 to junction U.S. Highway 25W, approximately 1 mile north of Lake City, Tenn., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over pertinent service routes as follows: (1) From Cincinnati, Ohio, over U.S. Highway 25 to Lexington, Ky. (also from Cincinnati across the Ohio River to Covington, Ky., thence over Kentucky Highway 17 to junction U.S. Highway 27, thence over U.S. Highway 27 to Lexington), and thence over U.S. Highway 27 to Chattanooga, Tenn., and (2) from Lexington, Ky., over U.S. Highway 25 via Livingston, Oakley, and East Bernstadt, Ky., to Corbin, Ky., thence over U.S. Highway 25W to Knoxville, Tenn., and return over the same routes.

No. MC 45626 (Deviation No. 24), VERMONT TRANSIT CO., INC., Burlington, Vt. 05401, filed October 3, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction New Hampshire Highway 11 and Springfield Road, in New London, N.H., over Springfield Road to junction Stony Brook Road in Grantham, N.H., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From New London, N.H., over New Hampshire Highway 11 to junction Stony Brook Road, thence over Stony Brook Road to junction Springfield Road, thence over Springfield Road to junction New Hampshire Highway 10, thence over New Hampshire Highway 10 to Grantham, N.H., and return over the same route.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-12309; Filed, Oct. 17, 1967; 8:48 a.m.]

[Notice 1114]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

OCTOBER 13, 1967.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING MOTOR CARRIERS OF PROPERTY

No. MC 113495 (Sub-No. 29) (republication), filed September 12, 1967, published in FEDERAL REGISTER issue of September 21, 1967, and republished this issue. Applicant: GREGORY HEAVY HAULERS, INC., 51 Oldham Street, Post

Office Box 5266, Nashville, Tenn. 37213. Applicant's representative: Wilmer B. Hill, 529 Transportation Building, Washington, D.C. 20006. Authority sought to operate a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles* (except commodities in bulk), from points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone, and Alton, Ill., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia, restricted to traffic originating in the St. Louis, Mo.-East St. Louis, Ill., commercial zone, and Alton, Ill. NOTE: The purpose of this republication is to reflect the hearing information.

HEARING: October 30, 1967, in Room 401, U.S. Courthouse and Customhouse, 1114 Market Street, St. Louis, Mo., before Examiner James A. McKiel. This application is subject to the same special rules of procedure for hearing as detailed in the order of No. MC 10761 (Sub-No. 202), Transamerican Freight Lines, Inc. (et al.), dated August 16, 1967, and served August 31, 1967.

No. MC 118959 (Sub-No. 30) (Amendment), filed March 3, 1967, published in the FEDERAL REGISTER issue of March 30, 1967, amended and republished as amended this issue. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles* (except commodities in bulk) from the St. Louis, Mo.-East St. Louis, Ill., commercial zone, and from Alton, Ill., to points in Alabama, Arkansas, Arizona, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Texas, and Tennessee, over irregular routes, restricted to traffic originating at points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone, and Alton, Ill. NOTE: Applicant is also authorized to conduct operations as a contract carrier in permit No. MC 125664 and Subs thereunder, therefor, dual operations may be involved. The purpose of this amendment is (1) to reflect a change in the scope of the application as previously published; and (2) to reflect the hearing information.

HEARING, REMAINS AS ASSIGNED: October 30, 1967, in Room 401, U.S. Courthouse and Customhouse, 1114 Market Street, St. Louis, Mo., before Examiner James A. McKiel. This application is subject to the same special rules of procedure for hearing as detailed in the order of No. MC 10761 (Sub-No. 202), Transamerican Freight Lines, Inc. (et al.), dated August 16, 1967, and served August 31, 1967.

No. MC 2165 (Sub-No. 18) (Republication), filed February 20, 1967, published FEDERAL REGISTER issue of March 16, 1967, and republished this issue. Applicant: LANGDON TRUCK LINES, INC., 120 Glenwood Avenue, Medina, N.Y. 14103. Applicant's representative: Raymond A. Richards, 23 West Main Street, Webster, N.Y. 14580. In the above-entitled proceeding the examiner recommended the granting to applicant a certificate of public convenience and necessity authorizing operations in interstate or foreign commerce as a common carrier by motor vehicle over irregular routes, of foodstuffs, except frozen foods and commodities in bulk, from Monroe, Orleans, Wayne, Cattaraugus, Genesee, and Ontario Counties, N.Y., to Brentwood, Long Island (Suffolk County), Hicksville, Syosset, and Westbury, Long Island (Nassau County), Elmsford, Mamaroneck, and Mount Kisco (Westchester County), and New York, N.Y. Restrictions: (1) The authority granted herein may not be joined with any of carrier's existing authority for the performance of through operations, (2) the authority is further restricted against interlining with other motor carriers, and (3) the authority as it refers to New York, N.Y., will be interpreted as excluding all points in New Jersey. A decision and order of the Commission, Review Board Number 2, dated September 29, 1967, and served October 6, 1967, as modified, finds that operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *foodstuffs* (except frozen foods and commodities in bulk), from points in Monroe, Orleans, Wayne, Cattaraugus, Genesee, and Ontario Counties, N.Y., to Brentwood (Suffolk County), Hicksville, Syosset, and Westbury (Nassau County), Elmsford, Mamaroneck and Mount Kisco (Westchester County), and New York, N.Y., restricted to traffic originating at points in Monroe, Orleans, Wayne, Chattaraugus, Genesee, and Ontario Counties, N.Y., and destined to Brentwood, Hicksville, Syosset, Westbury, Elmsford, Mamaroneck, Mount Kisco, and New York, N.Y.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act, and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest, may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 6031 (Sub-No. 40) (Republication) filed January 30, 1967, published FEDERAL REGISTER issue of February 24, 1967, and republished this issue. Applicant: BARRY TRANSFER & STORAGE COMPANY, a corporation, 120 East National Avenue, Milwaukee, Wis. 53204. Applicant's representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, Wis. 53203. By application filed January 30, 1967, applicant seeks a permit authorizing operations, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such businesses, from the plant site of Associated Grocers, Inc., at New Berlin, Wis., to points in a described portion of Illinois, under a continuing contract or contracts with Associated Grocers, Inc. An order entered herein on June 21, 1967, denied the application because of the objectionable dual operations which could result from a grant of authority as a contract carrier, subject to the condition that the matter would be further considered if applicant would submit a request in writing (1) that the instant application be amended to one seeking common instead of contract carrier authority and appropriate proof is submitted that the proposed operation is, in fact, common carriage, or (2) for the cancellation of its certificate No. MC 123765 coincidental with the issuance of a permit authorizing the operation requested herein. Applicant filed a request in writing that the instant application be amended to one seeking common rather than contract carrier authority.

A supplemental order of the Commission, Operating Rights Board dated September 26, 1967, and served October 9, 1967, as amended, finds that the present and future public convenience and necessity require operations by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, *equipment, materials, and supplies* used in the conduct of such businesses, from the plantsite of Associated Grocers, Inc., located at or near New Berlin, Wis., to those points in that part of Illinois on and north of U.S. Highway 30 (except those in the Chicago, Ill., commercial zone), that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that the holding by applicant of the certificate authorized to be issued in this proceeding and of the permits No. MC 6031 and Subs thereunder, will be consistent with the public interest and the national transportation policy. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for

other appropriate relief setting forth in detail the specific manner in which it has been so prejudiced.

No. MC 96530 (Sub-No. 3) (Republication), filed May 29, 1967, published FEDERAL REGISTER issue of June 15, 1967, and republished this issue. Applicant: JESS DANIEL RAUSCH, doing business as RAUSCH TRUCKING COMPANY, 124 Wilson Avenue, Cherokee, Iowa 51012. Applicant's representative: Wallace W. Huff, 314 Security Bank Building, Sioux City, Iowa 51101. By application filed May 29, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of liquid fertilizer, in specialized tank vehicle, from and to the points indicated below. An order of the Commission, Operating Rights Board dated September 29, 1967, and served October 9, 1967, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *liquid fertilizer*, in bulk, in tank vehicles, from Cherokee, Iowa, to those points in that part of Nebraska on and east of U.S. Highway 281, to points in that part of South Dakota east of the Missouri River, and to those points in that part of Minnesota on and south of U.S. Highway 12; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 102560 (Sub-No. 8) (Republication), filed May 5, 1967, published FEDERAL REGISTER issue of May 25, 1967 and republished this issue. Applicant: FREILER INDUSTRIES, INC., Box 636, Amite, La. 70422. Applicant's representative: Harold R. Ainsworth, 2307 American Bank Building, New Orleans, La. 70130. By application filed May 5, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) building materials, treated poles and treated piling, moving on either pole trailer or flatbed equipment, from points in Tangipahoa and St. Tammany Parishes, La., to points in Orleans Parish, La.; and (2) building materials, moving on flatbed equipment, from points in Orleans Parish, La., to points in East Baton Rouge, Livingston, Orleans, St. Tammany, and Tangipahoa Parishes, La.; Restricted against the transportation of cement, commodities in bulk, and against tacking to transport lumber, creosoted piling and poles from Orleans Parish, La., to points in Mississippi or Texas. An order of the Commission, Operating Rights Board dated September 28, 1967, and served October 5, 1967, as amended, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) *Lumber*, from points in Tangipahoa Parish, La., to points in Orleans Parish, La., (2) *Steel pipe, angles, and round iron*, from points in Orleans Parish, La., to points in Tangipahoa Parish, La., (3) *Pipe*, from points in Orleans Parish, La., to points in Livingston Parish, La., and (4) *Poles, piling, cross ties, and lumber*, from points in St. Tammany Parish, La., to points in Orleans Parish, La.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen on for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 107295 (Sub-No. 96) (Republication), filed August 11, 1966, published FEDERAL REGISTER issue of September 1, 1966, and republished this issue. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Etreet, Farmer City, Ill. 61842. Applicant's representative: Mack Stephenson, 42 Fox Mill Lane, Springfield, Ill. A decision and order of the Commission, Division 1, acting as an Appellate Division, dated October 3, 1967, and served October 11, 1967, finds that the present and future public convenience and necessity require operation by applicant, as a common carrier by motor vehicle, in interstate or foreign commerce, over irregular routes, of *wallboard, wallboard molding and aluminum molding, wallboard samples, adhesive cement, and plywood*, from the plantsite of Wallace Manufacturing Co., located at or near Pittsburg, Kans., (a) to points in Alabama, Georgia, Louisiana, Mississippi, and Texas, and (b) to points in Missouri solely for the purpose of tacking such authority with applicant's existing authority for the purpose of providing a through service from the above-described plantsite to points in Illinois, Indiana, Michigan, Wisconsin, Ohio, Arkansas, Kentucky, and Tennessee; that the instant proceeding should be held open for further consideration of applicant's fitness after a final determination of the pending proceeding in No. MC-C-5106. Because it is possible that other parties, who have relied upon the notice of the application as published in the FEDERAL REGISTER of September 1, 1966, may have an interest in and would be prejudiced by the lack of proper notice of the finding made in this order (solely with respect to the authority to serve points in Missouri for a limited purpose), a notice of the findings made in this order will be published in the FEDERAL REGISTER so that any party in interest may file a petition to reopen or for other appropriate relief within 30 days from the date of such publication, setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 114019 (Sub-No. 170) (Republication), filed April 3, 1967, published FEDERAL REGISTER issue of April 20, 1967, and republished this issue. Applicant: MIDWEST EMERY FREIGHT SYSTEM, INC., 7000 South Pulaski Road, Chicago, Ill. 60629. Applicant's representative: Carl Steiner, 39 South La Salle Street, Chicago, Ill. 60693. By application filed April 3, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of oleomargarine, salad dressing, coconut oil, vegetable oil, cooking oil, shortening, stearine, stearate, mayonnaise, and related advertising matter when moving in shipment with the specified commodities (except in bulk in tank vehicles), in vehicles equipped with mechanical refrigeration, from and to the points indicated below. An order of the Commission, Operating Rights Board dated September 29, 1967, and served October 6, 1967, as amended, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, of (1) *edible oils and edible oil products*, in containers, in vehicles equipped with mechanical refrigeration, and (2) *related advertising matter* in mixed loads with the above-specified commodities, from Columbus, Ohio, to points in Connecticut, Delaware, Maine (except Aroostook, Penobscot, Piscataquis, and Waldo, Counties), Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding

will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 115523 (Sub-No. 139) (Republication), filed May 8, 1967, published FEDERAL REGISTER issue of May 25, 1967, and republished this issue. Applicant: CLARK TANK LINES COMPANY, a corporation, 1450 Beck Street, Post Office Box 1895, Salt Lake City, Utah. Applicant's representative: Franklin D. Johnson, 422 Continental Bank Building, Salt Lake City, Utah 84101. By application filed May 8, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of hides, dry, green, and salted, loose or in bundles and not in containers, between points in Washington and California. An order of the Commission, Operating Rights Board dated September 18, 1967, and served October 4, 1967, finds that the present and future public covenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *hides*, except in containers, between points Washington and California; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 121550 (Sub-No. 1) (Republication), filed May 15, 1967, published FEDERAL REGISTER issue of July 7, 1967, and republished this issue. Applicant: JAMES C. WETHERILL, doing business as HATBORO DELIVERY SERVICE, 800 Ivyland Road, Warminster, Pa. 18974. Applicant's representative: S. H. Copelin, 121 South Broad Street, Philadelphia, Pa. 19107. By application filed May 15, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in the borough of Hatboro, Montgomery County, Pa., and points within 5 miles of the limits of said borough, and the freight terminals, bus terminals, wharves, airports, and Philadelphia Airport, located in Philadelphia, Pa. An order of the Commission, Operating Rights Board dated September 29, 1967, and served October 9, 1967, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from those points in an area bounded by a line beginning at the junction of U.S. Highway 611 and Bristol Road, and extending southerly on Bristol Road to Pennsylvania Highway 232, thence southerly on Pennsylvania Highway 232 to junction Pennsylvania Highway 63, thence northerly on Pennsylvania Highway 63 to junction U.S. Highway 611, thence northerly on U.S. Highway 611 to junction Bristol Road, thence along Bristol Road to Philadelphia, Pa.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 126128 (Sub-No. 5) (Republication), filed June 5, 1967, published FEDERAL REGISTER issue of June 22, 1967, and republished this issue. Applicant: DEAN W. HOBBENSIEFKEN, doing business as D. H. TRUCKING, Route 1, Box 241, Lyons, Oreg. 97358. By application filed June 5, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of lumber from Turner, Oreg., to the Public Docks located at Portland, Oreg. An order of the Commission, Operating Rights Board dated September 26, 1967, and served October 4, 1967, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *lumber*, from Turner, Oreg., to Portland, Oreg., restricted to the transportation of traffic having a subsequent movement by water; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 127353 (Sub-No. 2) (Republication), filed April 27, 1967, published FEDERAL REGISTER issue of May 18, 1967, and republished this issue. Applicant: PRESTON FEED & SEED LIMITED, Rural Route No. 2, Preston, Ontario, Canada. Applicant's representative: Frank J. Kerwin, Jr., 900 Guardian Building, Detroit, Mich. 48226. By application filed April 27, 1967, applicant seeks a permit authorizing operations, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of the commodities in bulk, in vehicles equipped with auger unloading equipment, between the points substantially as indicated below. An order of the Commission, Operating Rights Board dated September 29, 1967, and served October 10, 1967, as amended, finds that operation by applicant, in foreign commerce only as a contract carrier by motor vehicle, over irregular routes, of *grain and grain products and feed ingredients*, dry, in bulk, between those ports of entry on the international boundary line between the United States and Canada located at or near Port Huron and Detroit, Mich., on the one hand, and, on the other, points in Michigan, Illinois, Indiana, and Ohio, restricted to the transportation of traffic originating at, or destined to, points in the Province of Ontario, Dominion of Canada, under a continuing contract with Maple Leaf Mills, Ltd., of Toronto, Canada; will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128763 (Sub-No. 2) (Republication), filed April 18, 1967, published

FEDERAL REGISTER issue of May 4, 1967, and republished this issue. Applicant: K. H. TRANSPORT, INC., Rural Route Delivery 2, Ellicott City, Md. 21043. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. In the above-entitled proceeding, the examiner recommended the issuance of a permit to applicant authorizing operations in interstate or foreign commerce as a contract carrier, by motor vehicle, over irregular routes, of (1) foodstuffs, and ingredients, materials, supplies, equipment, and machinery used in the processing and manufacture of foodstuffs and (2) partially exempt commodities (i.e., commodities the transportation of which is exempt under the provisions of section 203(b)(6) of the Interstate Commerce Act if transported in vehicles not carrying any other property) when moving in the same vehicle and at the same time with the commodities described in (1) above, between plants, warehouses, and storage facilities of Campbell Soup Co. located at Milford, Bridgeville, Clayton, Georgetown, Wilmington, Milton, and Houston, Del., Whiteford, Snow Hill, Hurlock, Cambridge, Salisbury, Pocomoke City, Chestertown, Ridgely, Baltimore, Goldsboro, and Trappe, Md., Parksley, Va., Centre Hall, Bloomsburg, York, and Downingtown, Pa., Bridgeton, Swedesboro, Woodstown, Camden, Moorestown, and Glassboro, N.J., and Sumter, S.C., and the commercial zone of each, under contract with the Campbell Soup Co., *restricted* (1) against the transportation of the described articles in bulk (2) the service between Sumter, S.C., and Salisbury, Md., shall be limited to the transportation of products processed and manufactured by food processors, and

(3) Against service between Parksley, Va., and Baltimore, Md. A decision and order of the Commission, Review Board Number 1, dated October 4, 1967, and served October 10, 1967, as modified, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier, by motor vehicle, over irregular routes, of (1) *foodstuffs, and ingredients, materials, supplies, equipment, and machinery* used in the processing and manufacture of foodstuffs and (2) *commodities* the transportation of which is partially exempt from regulation under the provisions of section 203(b)(6) of the Interstate Commerce Act, when moving in the same vehicle and at the same time with the commodities described in (1) above, between plants, warehouses, and storage facilities of Campbell Soup Company located at or near Milford, Bridgeville, Clayton, Georgetown, Wilmington, Milton, and Houston, Del., Whiteford, Snow Hill, Hurlock, Cambridge, Salisbury, Pocomoke City, Chestertown, Ridgely, Baltimore, Goldsboro, and Trappe, Md., Parksley, Va., Centre Hall, Bloomsburg, York, and Downingtown, Pa., Bridgeton, Swedesboro, Woodstown, Camden, Moorestown, and Glassboro, N.J., and Sumter, S.C., under contract with the Campbell Soup Co., *restricted* (a) against the transportation of the described commodities in bulk, and (b) against service between Parksley, Va., and Baltimore, Md.; will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act, and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest, may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128764 (Sub-No. 2) (Republication), filed April 18, 1967, published FEDERAL REGISTER issue of May 4, 1967 and republished this issue. Applicant: ERDNER BROS. INC., Fow and Leahy Avenues, Swedesboro, N.J. 08085. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. In the above-entitled proceeding, the examiner recommended the issuance of a permit to applicant authorizing operations in interstate or foreign commerce as a contract carrier, by motor vehicle, over irregular routes, of (1) Foodstuffs, and ingredients, materials, supplies, equipment, and machinery used in the processing and manufacture of foodstuffs and (2) partially exempt commodities (i.e., commodities the transportation of which is exempt under the provisions of section 203(b)(6) of the Interstate Commerce Act if transported in vehicles not carrying any other property) when moving in the same vehicle and at the same time with the commodities described in (1) above, between plants, warehouses, and storage facilities of Campbell Soup Co. located at Milford, Bridgeville, Clayton, Georgetown, Wilmington, Milton, and Houston, Del., Whiteford, Snow Hill, Hurlock, Cambridge, Salisbury, Pocomoke City, Chestertown, Ridgely, Baltimore, Goldsboro, and Trappe, Md., Parksley, Va., Centre Hall, Bloomsburg, York, and Downingtown, Pa., Bridgeton, Swedesboro, Woodstown, Camden, Moorestown, and Glassboro, N.J., and Sumter, S.C., and the commercial zone of each, under contract with the Campbell Soup Co., *restricted,* (1) against the transportation of the described articles in bulk.

(2) The service between Sumter, S.C., and Salisbury, Md., shall be limited to the transportation of products processed and manufactured by food processors, and (3) against service between Parksley, Va., and Baltimore, Md. A decision and order of the Commission, Review Board Number 1, dated October 4, 1967, and served October 10, 1967, as modified, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of (1) *foodstuffs, and ingredients, materials, supplies, equipment, and machinery* used in the processing and manufacture of foodstuffs and (2) *commodities* the transportation of which is partially exempt from regulation under the provisions of section 203(b)(6) of the Interstate Commerce Act, when moving in the same vehicle and at the same time with the commodities described in (1) above, between plants, warehouses, and storage facilities of Campbell Soup Co. located at or near Milford, Bridgeville, Clayton, Georgetown, Wilmington, Milton, and Houston, Del., Whiteford, Snow Hill, Hurlock, Cambridge, Salisbury, Pocomoke City, Chestertown, Ridgely, Baltimore, Goldsboro, and Trappe, Md., Parksley, Va., Centre Hall, Bloomsburg, York, and Downingtown, Pa., Bridgeton, Swedesboro, Woodstown, Camden, Moorestown, and Glassboro, N.J., and Sumter, S.C., under contract with the Campbell Soup Co., *restricted,* (A) against the transportation of the described commodities in bulk, and (B) against service between Parksley, Va., and Baltimore, Md.; will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act, and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-9902. Authority sought for control and merger by CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025, of the operating rights and property of (1) DANCE FREIGHT LINES, INC., 286 New Circle Road, NE., Lexington, Ky. 40505, and (2) RELIANCE TRUCKING CO., INC., 254 New Circle Road, NE. Lexington, Ky. 40505. and for acquisition by CONSOLIDATED FREIGHTWAYS, INC., 235 Montgomery Street, San Francisco, Calif. 94104, of

control of such rights and property through the transaction. Applicants' attorneys: Eugene T. Liipfert, 1035 Universal Building North, Washington, D.C. 20009, Noel F. George, 100 East Broad Street, Columbus, Ohio 43215, and Robert C. Stetson, 175 Linfield Drive, Menlo Park, Calif. 94025. Operating rights sought to be controlled and merged: (1) *General commodities,* excepting, among others, household goods and commodities in bulk, as a *common carrier,* over regular routes, between Cincinnati, Ohio, and Columbus, Ga., between Corbin, Ky., and Columbia, S.C., serving all intermediate and certain off-route points, between Asheville, N.C., and Winston-Salem, N.C., serving all intermediate points, between Kings Mountain, N.C., and Spartanburg, S.C., between Winston-Salem, N.C., and Cincinnati, Ohio, between Lexington, Ky., and Chattanooga, Tenn., between Knoxville, Tenn., and Cartersville, Ga., serving no intermediate points, between Cincinnati, Ohio, and Dayton, Ohio, serving all intermediate points, and off-route points within 1 mile of Middletown, Ohio; and restricted against the transportation of livestock, between Knoxville, Tenn., and Johnson City, Tenn., serving the intermediate points of Rogersville and Kingsport, Tenn., and the off-route point of Pressman's Home, Tenn., and with service at junction U.S. Highways 11W and 25E for joinder purposes only; between Knoxville, Tenn., and Morristown, Tenn., serving no intermediate points, with restriction; between Atlanta, Ga., and Madison, Ga., serving all intermediate and certain off-route points, between Commerce, Ga., and Lavonia, Ga., serving all intermediate points, and off-route points within 2 miles of the specified route, and those within 3 miles of the terminal and intermediate points.

General commodities, excepting, among others, household goods, but not excepting commodities in bulk, between Atlanta, Ga., and Athens, Ga., serving all intermediate and certain off-route points; over numerous alternate routes for operating convenience only; *oleomargarine, butter,* and *eggs,* from Cincinnati, Ohio, to Chattanooga, Tenn., serving certain intermediate points, for delivery only; *peanut oil,* and *soy flakes,* from Louisville, Ky., to Cincinnati, Ohio, serving no intermediate points; *seed,* from Lexington, Ky., to Chicago, Ill., from Fort Wayne, Ind., to Lexington, Ky., from Salem, Ill., to Lexington, Ky., serving no intermediate points; *wallpaper,* from Joliet, Ill., to Lexington, Ky., serving no intermediate points; *bones,* and *scrap materials,* from Lexington, Ky., to Jeffersonville, Ind., serving the off-route point of New Albany, Ind., but with no service at intermediate points; *grease, tallow, white lead, turpentine,* and *linseed oil,* between Lexington, Ky., and Cincinnati, Ohio, serving no intermediate points; *empty vehicles,* used in conducting operations otherwise authorized, from Atlanta, Ga., to Canton, N.C. (one way only), between La Grange, Ga., on the one hand, and, on the other, Atlanta, Ga., between Atlanta, Ga., on the one hand, and, on the other, Greenville, S.C., between Macon, Ga., on the one hand, and, on the other, junction Georgia Highways 11 and 12; *general commodities,* excepting, among others, household goods and commodities in bulk, over irregular routes, between Columbus, Ga., on the one hand, and on the other, points in Russell County, Ala., *oleomargarine, butter,* and *eggs,* from Macon, Ga., to Thomasville, Ga., *peanuts,* from Albany, Ga., and points in Georgia within 60 miles of Albany, to Macon, Ga.; and

(2) *General commodities,* excepting, among others, household goods and commodities in bulk, as a *common carrier,* over regular routes, between Louisville, Ky., and Lexington, Ky., serving all intermediate points between Graefenburg and Lexington, Ky., including Graefenburg, between Frankfort, Ky., and Louisville and Lawrenceburg, Ky., serving all intermediate and off-route points within 5 miles of Frankfort, between Louisville, Ky., and Bardstown, Ky., serving the intermediate points of Bourbon and Nazareth, Ky., between junction U.S. Highway 60 and Gilliland Lane, approximately 2½ miles east of Middletown, Ky., and junction U.S. Highway 31E and Watterson Trail, approximately 2½ miles southeast of Fisherville, Ky., serving the intermediate point of Waterfill & Frazier Distillery, Ky., and between Lexington, Ky., and Avon, Ky., serving all intermediate points. CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, is authorized to operate as a *common carrier* in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Wyoming, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-9903. Authority sought for (1) control by INDIANAPOLIS & SOUTHERN MOTOR EXPRESS, INC., 1102 Prairie Street, Vincennes, Ind. 47591, of McDANIEL FREIGHT LINES, INCORPORATED, 414 North Walnut Street, Crawfordsville, Ind. 47933, and for acquisition by C. JAMES McCORMICK, also of Vincennes, Ind., of control of McDANIEL FREIGHT LINES, INCORPORATED, through the acquisition by INDIANAPOLIS & SOUTHERN MOTOR EXPRESS, INC., and (2) purchase by INDIANOPOLIS & SOUTHERN MOTOR EXPRESS, INC., of the operating rights and property of McDANIEL FREIGHT LINES, INCORPORATED, and for acquisition by C. JAMES McCORMICK, of control of such rights and property through the purchase. Applicants' attorney: John E. Lesow, 3737 North Meridian Street, Indianapolis, Ind. 46208. Operating rights sought to be controlled and transferred: *General commodities,* excepting, among others, household goods and commodities in bulk, as a *common carrier,* over regular routes, between Terre Haute, Ind., and Indianapolis, Ind., between Indianapolis, Ind., and Danville, Ill., between certain points in Indiana, serving all intermediate and certain off-route points, between certain points in Indiana, serving certain intermediate points, one with restriction, between Jamestown, Ind., and Dover, Ind., serving all intermediate points; serving numerous alternate routes for operating convenience only. INDIANAPOLIS & SOUTHERN MOTOR EXPRESS, INC., is authorized to operate as a *common carrier* in Indiana, Ohio, Illinois, and Kentucky. Application has been filed for temporary authority under section 210a(b).

No. MC-F-9904. Authority sought for purchase by BURNHAM VAN SERVICE, INC., 1636 Second Avenue, Columbus, Ga. 31902, of a portion of the operating rights of THOMPSON'S MOTOR SERVICE, INC., 7325 Cottage Grove Avenue, Chicago, Ill. 60628. Applicants' attorneys: Eugene L. Cohn and Bernard G. Colby, both of 1 North La Salle Street, Chicago, Ill. 60602. Operating rights sought to be transferred: *Household goods,* as defined by the Commission, as a *common carrier,* over irregular routes, between Chicago, Ill., and points within 25 miles thereof, on the one hand, and, on the other, points in the States of Iowa, Wisconsin, and Minnesota. Vendee is authorized to operate as a *common carrier* in all States in the United States (except Alaska), and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-9905. Authority sought for purchase by WOOTEN TRANSPORTS, INC., 153 Gaston Avenue, Memphis, Tenn. 38106, of a portion of the operating rights of WHARTON TRANSPORT CORPORATION, 1498 Channel Avenue, Memphis, Tenn. 38113, and for acquisition by W. H. WOOTEN, Box 28, Covington, Tenn., of control of such rights through the purchase. Applicants' attorney: James N. Clay, III, 2700 Sterick Building, Memphis, Tenn. Operating rights sought to be transferred: *Petroleum and petroleum products,* as described in appendix XIII to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 (except liquefied petroleum gas and except petrochemicals as described in appendix XV to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209), in bulk, in tank vehicles, as a *common carrier,* over irregular routes, from Perryville, Tenn., to points in that part of Kentucky on and west of U.S. Highway 31W, and certain specified points in Alabama and Mississippi; *gasoline, kerosene, jet fuel, tractor fuel, diesel fuel, fuel oils, petroleum napthas,* and *petroleum asphalt,* in bulk, in tank vehicles, from points in Tennessee within the Memphis, Tenn., commercial zone, as defined by the Commission, to points in Mississippi. Vendee is authorized to operate as a *common carrier* in Arkansas, Alabama, Kentucky, Mississippi, Tennessee, Missouri,

Illinois, Iowa, Indiana, Kansas, Louisiana, Oklahoma, Texas, Georgia, Michigan, Ohio, Wisconsin, and North Carolina. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-12310; Filed, Oct. 17, 1967; 8:48 a.m.]

[Notice 473]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 13, 1967.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC 67 (49 CFR Part 340) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protest must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 17211 (Sub-No. 6 TA), filed October 10, 1967. Applicant: JESCO MOTOR EXPRESS, INC., Post Office Box 523, 162 Columbus Road, Mount Vernon, Ohio 43050. Applicant's representative: Charles A. Tell, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Empty glass containers,* from Columbus and Shelby, Ohio, to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Pennsylvania (except Philadelphia), Tennessee, Virginia, West Virginia, and Wisconsin, for 180 days. Supporting shipper: The Chattanooga Glass Co., Chattanooga, Tenn. Send protests to: Arthur M. Culyer, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 236 New Post Office Building, Columbus, Ohio 43215.

No. MC 41116 (Sub-No. 32 TA), filed October 10, 1967. Applicant: FOGLEMAN TRUCK LINE, INC., 1724 West Mill Street, Post Office Box 1504, Crowley, La. 70526. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Canned or bottled food stuffs, and dried fruits and nuts,* in packages or containers (not frozen or requiring movement in vehicles equipped with mechanical refrigeration), from New Orleans, La., and points in Arkansas, Alabama, California, Idaho, Oregon, Tennessee, Texas, and Mississippi, to points in Alabama, Arkansas, Louisiana, Tennessee, Texas, Mississippi, Georgia, Florida, South Carolina, Kentucky, and Missouri, under a continuing contract with Fraering Brokerage Co., Inc., for 180 days. Supporting shipper: Fraering Brokerage Co., Inc., 4906 Jefferson Highway, Post Office Box 10221, New Orleans, La. 70121. Send protests to: W. R. Atkins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, T-4009 Federal Building, 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 52579 (Sub-No. 89 TA), filed October 9, 1967. Applicant: GILBERT CARRIER CORP., 1 Gilbert Drive, Secaucus, N.J. 07094. Applicant's representative: Aaron Hoffman (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Wearing apparel,* loose, on hangers only, and *materials and supplies* used in the manufacture thereof; between points in the New York, N.Y., commercial zone, as defined by the Commission, on the one hand, and, on the other, Bristol, Ga., and Chattanooga, Tenn., for 150 days. Supporting shippers: (1) Lisanne, Inc., 43 Hall Street, Brooklyn, N.Y. 11205, (2) Carter's Manufacturing Co., Tippins Street, Baxley, Ga. Send protests to: District Supervisor Walter J. Grossmann, Interstate Commerce Commission, 1060 Broad Street, Room 363, Newark, N.J. 07102.

No. MC 66562 (Sub-No. 2264 TA), filed October 10, 1967. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York, N.Y. 10017. Applicant's representative: John H. Engel, 2413 Broadway, Kansas City, Mo. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities,* moving in express service: (1) Between Dallas, Tex., and Pueblo, Colo., serving the intermediate and/or off-route points of Decatur, Bowie, Henrietta, Wichita Falls, Electra, Vernon, Chillicothe, Quanah, Childress, Memphis, Clarendon, Claude, Amarillo, Dumas, Dalhart, and Texline, Tex., and Clayton and Raton, N. Mex., and Trinidad and Walsenburg, Colo.; from Dallas, over Dallas-Fort Worth Turnpike to Fort Worth, Tex., thence over U.S. Highway 287 to Dumas, Tex., thence over U.S. Highway 87 to intersection with Interstate Highway 25 at Raton, N. Mex., thence over Interstate Highway 25/U.S. Highway 87 to Pueblo, and return over the same route. (2) Between Amarillo, Tex., and Borger, Tex., serving no intermediate points; from Amarillo, over Texas Highway 136 to Borger, and return over the same route. Restrictions: The service to be performed shall be limited to that which is auxiliary to or supplemental of express service of the Railway Express Agency, Inc. Shipments transported shall be limited to those moving on through bills of lading or express receipts. Permission to tack requested: Applicant requests that the authority for the proposed operations, if granted, be construed as an extension, to be joined, tacked, and combined with R E A's existing authority in MC 66562 and subs thereunder, thereby negating the restrictions against tacking or joinder customarily placed upon temporary authority, for 150 days. Supporting shippers: There are approximately 48 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Stephen P. Tomany, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 346 Broadway, New York, N.Y. 10013.

No. MC 94350 (Sub-No. 181 TA), filed October 10, 1967. Applicant: TRANSIT HOMES, INC., Post Office Box 1628, Haywood Road at Transit Drive, Greenville, S.C. 29602. Applicant's representative: Henry P. Willimon (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Portable buildings* traveling on their own or removable undercarriages which are designed to be joined together to form a complete structure, equipped with hitch ball coupler, excluding trailers or mobile homes designed to be drawn by passenger automobiles, and oilfield or industrial buildings, from Boones Mill, Va., and Rocky Mount, Va., to States east of the Mississippi River, including Louisiana and Minnesota, Arkansas, Iowa, and Missouri. Supporting shipper: Continental Homes, Post Office Box 1800, Roanoke, Va. Send protests to: Arthur B. Abercrombie, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 601A Federal Building, 901 Sumter Street, Columbia, S.C. 29201.

No. MC 103993 (Sub-No. 304 TA), filed October 9, 1967. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Robert G. Tessar (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements, from Bean Station, Tenn., to points in Tennessee, Virginia, West Virginia, Kentucky, Ohio, Arkansas, Alabama, Georgia, South Carolina, and North Carolina, for 180 days. Supporting shipper: Norris Homes, Inc., New Tazewell, Tenn. 37825. Send protests to: District Supervisor, Bureau of Operations, Interstate Commerce Commission, 308 Federal Building, Fort Wayne, Ind. 46802.

No. MC 103993 (Sub-No. 305 TA), filed October 9, 1967. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Robert G. Tessar (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Travel trailers, pickup campers, and camp coaches, in initial movements,* from New Tazewell, Tenn., to points in Virginia, West Virginia,

Maryland, New Jersey, Alabama, Mississippi, Louisiana, Texas, Illinois, Missouri, Florida, Georgia, North Carolina, and South Carolina, for 180 days. Supporting shipper: Norris Homes, Inc., New Tazewell, Tenn. 37825. Send protests to: District Supervisor, J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 308 Federal Building, Fort Wayne, Ind. 46802.

No. MC 105556 (Sub-No. 49 TA), filed October 9, 1967. Applicant: HOUCK TRANSPORT COMPANY, Post Office Box 559, Glendive, Mont. 59330. Applicant's representative: Albert C. Houck (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete products, consisting of conduits, drain tile, sewer pipe, flooring, drain tile fittings, structural beams, and brick, and concrete and gypsum building blocks*, from Mandan, N. Dak., and points within 10 miles thereof, to points in Minnesota, Wyoming, and ports of entry on the Canadian border in Minnesota, Montana, and North Dakota, for 180 days. Supporting shipper: Supercrete Industries, Inc., Post Office Box 117, Mandan, N. Dak. 58554. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 251 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 113760 (Sub-No. 5 TA), filed October 9, 1967. Applicant: H. M. POPP TRUCK LINES, INC., Post Office Box 447, Commerce City, Colo. 80022. Applicant's representative: Alvin J. Meiklejohn, Jr., 420 Denver Club Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and crude oil*, in bulk, in tank vehicles, from points in Carter and Powder River Counties, Mont., to points in Campbell, Crook, and Weston Counties, Wyo., for 150 days. Supporting shipper: Western Crude Oil, Inc., 2900 Security Life Building, Denver, Colo. 80202. Send protests to: District Supervisor Charles W. Buckner, Interstate Commerce Commission, 2022 Federal Building, 1961 Stout Street, Denver, Colo. 80202.

No. MC 115257 (Sub-No. 43 TA), filed October 10, 1967. Applicant: SHAMROCK VAN LINES, INC., 432 North Belt Line Road, Post Office Box 5447, Dallas, Tex. 75222, Irving, Tex. 75060. Applicant's representative: W. J. Foley (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Skid mounted air-conditioners*, in Air-Ride, padded vans with logistic tracking and nylon tie off straps; from Santa Ana, Calif., to airline terminals throughout the United States (except Alaska and Hawaii). NOTE: Does not intend to tack; for 180 days. Supporting shipper: Lear Siegler, Inc., Hokanson Division, 3333 West Warner Avenue, Santa Ana, Calif. 92704. Send protests to: E. K. Willis, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 124221 (Sub-No. 13 TA), filed October 9, 1967. Applicant: HOWARD BAER, 821 East Dunne, Post Office Box 127, Morton, Ill. 61550. Applicant's representative: Robert T. Lawley, 306–308 Reisch Building, Springfield, Ill. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sour cream, sour cream mixtures, imitation cream flavored milk, low fat milk, liquid dietary foods, fruit segments, ice cream mix, orange juice, fruit juice drinks, cottage cheese, and dairy products*, as described in section B of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in containers, in mechanically refrigerated vehicles, from Whitewater, Wis., to Peoria, Ill., and St. Louis, Mo., for the account of Hawthorn Mellody Farms Dairy of Wisconsin; for 180 days. Supporting shipper: Hawthorn Mellody Farms Dairy, Whitewater, Wis. Send protests to: Raymond E. Mauk, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1086 Federal Building and Federal Office Building, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 127806 (Sub-No. 6 TA), filed October 6, 1967. Applicant: BEER TRANSPORT, INC., 130 Steamboat Road, Great Neck, N.Y. 11024. Applicant's representative: Edward F. Bowes, 1060 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* in containers, and *advertising materials and displays for* the account of Ramapo Valley Distributors, Inc.; from the plantsites of Rheingold Breweries, Inc., in New York, N.Y., and Orange, N.J., to West Hartford, Willimantic, Fairfield, Norwalk, and Torrington, Conn.; *Malt beverages* (other than in bulk in tank vehicles) and *advertising materials;* from the plantsite of Jacob Ruppert Brewery, Inc., in New Bedford, Mass., to Wethersfield, Willimantic, and Fairfield, Conn. Restricted to transportation to be performed under contract with Ramapo Valley Distributors, Inc., for 150 days. Supporting shipper: Ramapo Valley Distributors, Inc., 37 Washington Avenue, Suffern, N.Y. Send protests to: E. N. Carignan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 346 Broadway, New York, N.Y. 10013.

No. MC 128517 (Sub-No. 2 TA), filed October 10, 1967. Applicant: STANLEY WISHNIA AND SEYMOUR MILLER, a partnership, doing business as MINUTE SERVICE CO., 838 Ninth Avenue, New York, N.Y. 10019. Applicant's representative: Irving Abrams, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Used photocopy equipment and machines, and defective or returned photocopy supplies, and machines*, from New York, N.Y., to Teaneck, N.J., for 150 days. Supporting shipper: 3M Business Products Sales, Inc., 845 Third Avenue, New York, N.Y. 10022. Send protests to: Stephen P. Tomany, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 346 Broadway, New York, N.Y. 10013.

No. MC 129431 (Sub-No. 1 TA), filed October 10, 1967. Applicant: GEORGE R. PERRY, Route 2, Box 39B, Chesterton, Ind. 46304. Applicant's representative: Samuel Ruff, 2109 Broadway, East Chicago, Ind. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Stone*, from Joliet, Ill., to points in Lake County, Ind., for 150 days. Supporting shipper: A. Metz, Inc., of Gary, Ind., 7100 West Ninth Avenue, Gary, Ind. Send protests to: District Supervisor J. H. Gray, Interstate Commerce Commission, Bureau Operations, 308 Federal Building, Fort Wayne, Ind. 46802.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary*.

[F.R. Doc. 67-12311; Filed, Oct. 17, 1967; 8:48 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 13, 1967.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41147—*Cast iron soil pipe from Holt, Ala.* Filed by O. W. South, Jr., agent (No. A5059), for interested rail carriers. Rates on cast iron soil pipe and related articles, in carloads, from Holt, Ala., to Buffalo, N.Y.

Grounds for relief—Private truck competition.

Tariff—Supplement 59 to Southern Freight Association, agent, tariff ICC S-243.

FSA No. 41148—*Lumber from and between points in southwestern territory.* Filed by Southwestern Freight Bureau, agent (No. B-9025), for interested rail carriers. Rates on lumber and related articles, in carloads, from and between points in southwestern territory, on the one hand, to and between points in Illinois, Iowa, Kansas, Minnesota, Missouri, and Nebraska, on the other.

Grounds for relief—Carrier competition.

Tariff—Supplement 53 to Southwestern Freight Bureau, agent, tariff ICC 4690.

FSA No. 41149—*Common salt from points in Kansas and Utah.* Filed by Trans-Continental Freight Bureau, agent (No. 446), for interested rail carriers. Rates on common salt, as described in the application, in carloads, from points in Kansas and Utah, to points in Minnesota, Montana, and North Dakota.

Grounds for relief—Market competition, short-line distance formula and grouping.

Tariffs—Supplement 45 to Trans-Continental Freight Bureau, agent, tariff ICC 1741, and other tariffs named in the application.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary*.

[F.R. Doc. 67-12312; Filed, Oct. 17, 1967; 8:48 a.m.]

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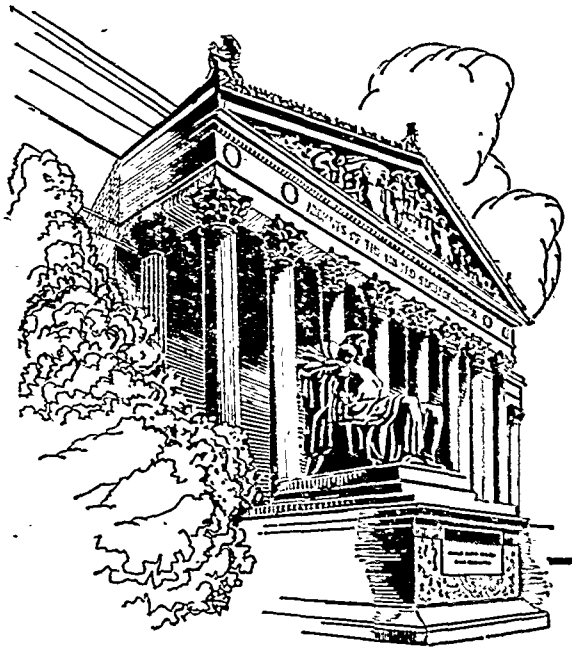
Wednesday, October 18, 1967 • Washington, D.C.

PART II

Department of Agriculture
Consumer and Marketing Service



Milk in Massachusetts-Rhode Island and Connecticut Marketing Areas

Decisions

THE NATIONAL ARCHIVES OF THE UNITED STATES * 1934 *

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1001, 1015]

[Docket Nos. AO-14-A38, AO-305-A12]

MILK IN MASSACHUSETTS-RHODE ISLAND AND CONNECTICUT MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Milk in the Massachusetts-Rhode Island (to be newly designated as "Massachusetts-Rhode Island-New Hampshire Marketing Area") and Connecticut marketing areas:

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 Concord, N.H., Framingham, Mass., Greenfield, Mass., and Hartford, Conn., on June 20-July 1, 1966, pursuant to notice thereof issued on May 19, 1966 (31 F.R. 7520) and a supplemental notice which was issued June 7, 1966 (31 F.R. 8242).

A further reopening of the hearing was held during June-August 1967, as a part of a joint hearing for the six northeastern markets at which the appropriate level of surplus milk pricing was considered.

With respect to the Massachusetts-Rhode Island order the hearing was reopened on February 15-16, 1967, in conjunction with a joint emergency hearing involving the Massachusetts-Rhode Island, Connecticut and New York-New Jersey markets for consideration of the elimination of seasonal pricing and adoption of a "take-out-pay-back (Louisville)" plan for payment of producers. The hearing was again reopened on April 14-15, 1967, in conjunction with regional hearings on Federal orders generally to consider emergency Class I price increases. Decisions have been issued on the matters involved at each of these hearings and the amending orders became effective April 1 and May 1, 1967, respectively.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on June 27, 1967 (32 F.R. 9902; F.R. Doc 67-7467) filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The preliminary statement, material issues, findings and conclusions, rulings and general findings of the recommended decision (32 F.R. 9902; F.R. Doc 67-7467) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under the subheading *"Preliminary statement."*, the first paragraph is deleted and the last sentence in the final paragraph is changed.

2. A new paragraph is added following the listing of material issues.

3. Under Issue No. 1, four new paragraphs are added following the 36th paragraph.

4. Under Issue No. 2, part (b):

(i) The word "July" is changed to "August" in the first, 10th, and 16th paragraphs.

(ii) Five new paragraphs are added following the 10th paragraph.

(iii) Five new paragraphs are added following the 19th paragraph.

5. Under Issue No. 2, part (c):

(i) A new paragraph is added following the first paragraph.

(ii) Nine new paragraphs are added following the sixth paragraph.

(iii) Three new paragraphs are added following the final paragraph.

6. Under Issue No. 3, the sixth paragraph is revised.

7. Under Issue No. 6, part (a):

(i) The first paragraph is revised.

(ii) The 23d and 24th paragraphs are deleted and a new paragraph substituted therefor.

(iii) The 27th paragraph is deleted.

(iv) The last three sentences in the final paragraph are deleted and three new paragraphs are added.

8. Issue No. 8 is deleted.

9. Issue No. 9, the first paragraph is revised and a new paragraph is added immediately thereafter.

PRELIMINARY STATEMENT

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

1. Extension of the Massachusetts-Rhode Island marketing area.

2. Modification of the pooling provisions in one or both orders with respect to:

(a) Exempt distributing plants.
(b) Supply plants.
(c) Diversions.
(d) Certified milk.
(e) Exempt government agency.
(f) Dairy farmer for other markets.
(g) Pool milk definition.

3. Cooperative as a handler on farm bulk tank milk.

4. Definition and treatment of producer handlers.

5. Classification and assignment provisions.

6. Modification of pricing provisions with respect to:

(a) Class I.
(b) Class II.

7. Zoning and zone differentials.

8. Farm location differentials.

9. Payment provisions.

10. Miscellaneous and administrative provisions.

With respect to Issue No. 8 (farm location differentials) a final decision is not made at this time. The question of the legality of the farm location differential provisions in the Massachusetts-Rhode Island order is currently pending before the Circuit Court of Appeals for the District of Columbia on appeal by the Government from an injunction issued by the District Court. Final disposition of Issue No. 8 therefore is being deferred pending completion of these legal proceedings.

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. *Extension of the Massachusetts-Rhode Island marketing area.* The Massachusetts-Rhode Island marketing area should be expanded by adding the New Hampshire counties of Belknap, Hillsboro, Merrimack, Rockingham, and Strafford, the towns of Ashland, Bridgewater, Bristol, Holderness and Plymouth in Grafton County, the towns of Dublin, Jaffery, Harrisville, Nelson, Marlboro, Roxbury, Sullivan, and Keene City in Cheshire County; and in addition, that portion of Essex County, Mass., not included in the present marketing area. Such expanded marketing area should be designated the Massachusetts-Rhode Island-New Hampshire marketing area.

The maximum area of extension as set forth in the proposals contained in the hearing notice included, in addition to the area herein proposed, the remainder of Cheshire County, Sullivan County, the towns of Enfield, Lebanon, Canaan, Hanover, Lyme, and Oxford in Grafton County, all in New Hampshire, the counties of Windham and Windsor and the towns of Thetford, Fairlee, and Bradford in Orange County, all in Vermont and all of the remaining nonfederally regulated area of Massachusetts except Berkshire and Nantucket Counties.

The area of extension as herein proposed is a relatively densely populated area. The principal cities and towns include Concord, Manchester, Nashua, Portsmouth, Dover, Rochester, Laconia, and Keene, New Hampshire; Amesbury, Newburyport, Gloucester, Ipswich, and Danvers, Massachusetts. The population of the New Hampshire portion of this territory is about 460,000 or 75 percent of the total population within the State. The population of the Essex County, Mass., portion of this territory is about 135,000. The total population in this additional area to be included in the marketing area equals about 11 percent of the population within the present marketing area.

This area of extension as herein recommended is served almost exclusively by presently regulated handlers and/or by handlers who would be fully regulated by virtue of their sales in the expanded marketing area. It insures a minimum involvement of outside unregulated handlers based on their existing sales patterns and at the same time encompasses the preponderance of the normal sales area of all handlers who would be regulated under the expanded order.

Regulation of fluid milk handlers who distribute within the area of extension herein proposed is necessary to assure orderly marketing conditions and effectuate the declared policy of the Act. There is presently a wide variation in prices paid by handlers for fluid milk which is distributed within this area.

Interstate milk procurement practices are common among handlers selling fluid milk in the area.

State regulatory agencies for many years have administered classified pricing programs applicable to handlers within the area. In recent years, however, such programs have been applicable to less than one-half of the milk distributed there due to the interstate procurement and sales practices which handlers are employing and over which such agencies have no pricing authority. Several of the larger handlers in the area now procure milk supplies almost exclusively from Vermont and Maine at prices substantially below the prices which they are required to pay for milk procured from producers within the States (New Hampshire and Massachusetts) in which their plants are located. Such out-of-State procurements have substantially displaced milk supplies from local producers. These displaced supplies have attached themselves to the Massachusetts-Rhode Island order pool.

During 1962 one handler, who also operates regulated plants under the Massachusetts-Rhode Island and Connecticut orders, constructed a fluid milk bottling plant at Portsmouth, N.H. The milk supply for this plant is obtained from Vermont sources at a price which is about the level of the Federal order blend price. The milk bottled in this plant is distributed through a chain of dairy stores which the handler opened in New Hampshire and the nonfederally regulated areas of Massachusetts. Some of such stores are located in Rockingham, Hillsboro, Merrimack, Strafford, and Belknap Counties of New Hampshire as well as Essex County, Mass.

Another of the larger handlers in the area proposed for expansion, who also operates a number of regulated plants under the Massachusetts-Rhode Island and Connecticut orders, receives about 3 million pounds of milk each month from out-of-State sources at his Manchester, N.H., plant from which milk is distributed in the New Hampshire counties of Hillsboro, Merrimack, Rockingham, Strafford, and in Essex County, Mass. Most of the milk supply for this plant is procured in the State of Maine at a cost significantly below the Federal order blend price. This low cost supply of milk is made possible by procuring the milk in conjunction with a supply of fluid milk for local distributing plants in the State of Maine.

The Maine Milk Control Commission establishes minimum classified milk prices for milk distributors in the State. The Class I price is the same as the Federal order city plant Class I price while the Class II (surplus) price is set 26 cents below the Federal order city plant Class II price. Under the Maine milk control law, milk sold in bulk outside of the State is classified and priced as Class II milk irrespective of its ultimate use. Thus the milk shipped to the Manchester plant is accounted for as Class II milk while the milk distributed as fluid milk in the local Maine markets is accounted for as Class I milk.

As a practical matter, to maintain a supply of milk the handler must return to his Maine producers an average price which is competitive with the Federal order blend price. However, this arrangement enables him to procure a substantial portion of his supply for fluid use at his New Hampshire plant at a cost even below the Federal order blend price.

This Manchester handler also procures some supplies in the State of Vermont for sale in New Hampshire and in Essex County, Mass. This milk is obtained at a price slightly above the blend price under the order. Prior to obtaining milk from these out-of-State sources this handler received milk from some 66 local New Hampshire producers who have subsequently been shifted to the Federal order market.

Another handler located in Portsmouth, N.H., dropped the last of his New Hampshire producers in 1964 and is now receiving his entire supply from some 25 producers located in southern Maine at a price slighlty over the Federal order blend price applicable in that area. This milk is in turn distributed in Essex County, Mass., and the New Hampshire counties of Rockingham and Strafford.

Several other handlers operating bottling plants in the proposed additional area purchase bulk supplies of milk from Vermont sources at prices slightly over the order blend price. Such plants are located at Ipswich, Mass.; and Laconia, Milford, Manchester, West Franklin, Plymouth, and Nashua, N.H.

Handlers who purchase out-of-State milk supplies at prices approximating the Federal order blend price handle about one-half of all the milk distributed in the proposed area of extension in New Hampshire. About 10 percent is distributed by handlers presently regulated under the Massachusetts-Rhode Island order and the remainder is distributed by relatively small local dealers and producer handlers.

The procurement practices of the larger handlers in this proposed area of extension have resulted in a very unstable market. Local producers have no assurance of a continuing market for their milk with local handlers. To the extent that such a market exists, producers whose milk has been priced under State regulation, and who have historically received a price equivalent to the Federal order Class I price for milk disposed of for Class I use, now receive a substantially lesser price. To the extent that regulated handlers sell regulated milk in the area they are at a substantial disadvantage in competition with unregulated handlers whose procurement cost is as much as $1 a hundredweight less. It is apparent that it is this situation which has motivated regulated handlers to purchase or construct plants to serve the area herein proposed to be added to the marketing area.

There are very few local Massachusetts producers (approximately 15) delivering to local handlers who would be brought under regulation with the addition of the remainder of Essex County to the marketing area.

Essex County is a heavily populated area. The population of the county not now included but herein proposed for inclusion in the marketing area is approximately 135,000. Because of this heavy concentration of population milk handlers have found it a highly desirable area in which to sell milk and competition for milk sales is strong. Largely as a result of this strong competition handlers have sought milk supplies from out-of-State unpriced sources. Such milk is purchased at essentially the same prices at which presently unregulated New Hampshire dealers pay for out-of-State milk. As a result of the competitive situation only about 13 percent of the milk distribution in this area is by local State regulated handlers purchasing local supplies while almost 50 percent of the distribution is by unregulated handlers purchasing milk supplies from out-of-State unpriced sources. Of the remainder, 30 percent is by presently federally regulated handlers and 7 percent by producer-handlers.

Procurement practices performed primarily by the larger unregulated handlers have resulted in a very unstable market in this proposed area of extension. Producers under the order have experienced an ever increasing loss of Class I sales to unregulated milk in Essex County. While the regulated market carries the necessary balancing supplies it no longer substantially shares in the Class I sales. The few remaining local producers, although they opposed Federal regulation of this area, in fact have no assurance of a continuing market for their milk with local handlers. To the extent that such a market still exists, these producers whose milk is priced under State regulation receive a price equivalent to the Federal order Class I price for milk disposed of for Class I use. This represents a substantially better price than the blended price received by producers delivering to handlers regulated by the Federal order.

However, it must be recognized that one of the primary reasons that these local producers can consider opposing regulation in the face of continuing possible loss of their local market is the existence of the stable marketing conditions in the adjacent federally regulated marketing area. These producers and the local handlers are generally able to dispose of any surplus milk through regulated plants and to rely on the regulated milk supplies for balancing needs. In addition, these producers have reasonable assurance of an outlet for their milk in the framework of the Federal order upon loss of their local markets.

Handlers who would be brought under regulation generally took no position at the hearing. However, one handler, who operates a plant in Manchester and who has attempted to pay his producers on the basis of the established New Hampshire Milk Board prices, stated that he was in an untenable position in competing with handlers using out-of-State milk. He had lost substantial sales which resulted in lower returns to his producers. He urged that action be taken which

would insure that no handlers distributing milk in his local market (Hillsboro County) could obtain a milk supply at less than the established price.

The need for expansion of the marketing area into New Hampshire has been accentuated by the decision of the New Hampshire Milk Control Board to terminate its price control on both the retail and producer levels. This circumstance provides an even greater threat to the already unstable market conditions. Local New Hampshire producers who sell milk directly to New Hampshire handlers are faced with a substantial reduction in their returns in the absence of regulation.

Federal regulation of this additional territory will assure uniform minimum prices to all handlers doing business in the area. This will assist local producers in maintaining their traditional markets and insure producer returns sufficient to maintain a continuing adequate supply of milk for the market. In addition, it will assist handlers by removing pressures for making uneconomic shortrun procurement and operating decisions in an effort to maintain their market position.

Extension of the Massachusetts-Rhode Island marketing area to include the aforementioned territory is the most appropriate means of effectuating the policy of the Act therein. In the context of existing operations in the proposed area of extension such area might be distinguishable as a separate marketing area. However, this situation in large measure reflects the adjustments many handlers have made to avail themselves of the opportunity to serve such area with unpriced milk.

As has been previously indicated a number of regulated handlers have built or purchased unregulated plants to serve this area. In fact, however, the location of this proposed area of extension with respect to the current regulated area, the location of regulated plants, the interrelationship of producers and the volume of Class I sales demonstrates the need for a single regulation. It appears likely that with the extension of regulation there will be a number of plant consolidations and a reorganization of routes to the end that, in fact, the entire area will be a single integrated market. The principal proponent for a single regulation represents the majority of dairy farmers delivering milk to dealers in the area of extension and in addition is one of the major cooperatives representing producers serving the present marketing area. With such close interrelationship of plant ownership, distribution patterns, milk supply, and producer representation orderly marketing in the area will best be served by adding such territory to the present marketing area.

The additional territory in New Hampshire consisting of Belknap, Hillsboro, Merrimack, Rockingham, and Strafford Counties plus parts of Cheshire and Grafton Counties represents about 40 percent of the area of the State. About 75 percent of the population of the State is within this area. The addition of New Hampshire to the name of the marketing area will provide a more descriptive characterization of the area under regulation. Accordingly, the marketing area should be designated the Massachusetts-Rhode Island-New Hampshire marketing area.

Although certain adjacent New Hampshire and Vermont counties and towns bordering the Connecticut River and the remaining nonfederally regulated area in Massachusetts, except Berkshire and Nantucket Counties were proposed for inclusion in the marketing area, it cannot be concluded on the basis of this record that such territory appropriately should be included.

Proponents in forming their proposals attempted, insofar as possible, to cover all of the territory in which New Hampshire handlers who would be brought under regulation do any business. With this objective it was necessary to propose the inclusion of all of Cheshire and Sullivan Counties and the Grafton County towns of Lebanon and Hanover, all in New Hampshire. Recognizing that Vermont dealers had substantial distribution in this particular area they extended their proposal to include certain adjacent counties and towns in Vermont which might be expected to be the primary sales area of such Vermont based dealers.

While the record is not sufficiently detailed to determine a precise quantitative breakdown of distribution patterns of Vermont and New Hampshire dealers in the New Hampshire area here excluded, it is clear that by far the preponderance of such distribution is by Vermont handlers and/or local New Hampshire dealers who would not be regulated if this territory were excluded from the marketing area.

There are no milk processing plants located in either Cheshire or Sullivan Counties. The area is sparsely populated and by location is more accessible to Vermont dealers than to New Hampshire dealers who will become fully regulated.

The western boundary of the area of extension herein adopted was proposed and supported by Vermont handlers. Recognizing their competition with New Hampshire dealers in distribution in the city of Keene and adjacent towns to the east in Cheshire County they conceded the need for including such area in the marketing area. They pointed out that this area involved only a small part of their business and this was insufficient to bring them under full regulation. They further contended that, with the marketing area boundary as herein proposed, sales by regulated handlers in the unregulated New Hampshire area in Sullivan and Cheshire Counties would not exceed 5 percent of any such handler's total sales. They estimated that Vermont dealers, on the other hand, did 85 percent of the total business in this area. Their estimates in this regard were uncontested.

There is no showing of any market disorder in the Vermont area of proposed extension. Milk purchased in Vermont by local Vermont dealers is regulated by the Vermont Milk Control Board. The price established by the Board applies to all milk purchased without regard to use. This price ranges from 40 cents over the Federal order blend price in the 201–210-mile zone in northern Vermont to 85 cents over such price in the southern part of the State. Hence, while local dealers obtain milk for Class I use at a price below the Federal order price this need be a matter of concern only to the extent that it contributes to disorderly marketing conditions in areas of competition with regulated handlers. There was no such showing on the record.

Excepting Essex County, hereinbefore discussed, no additional territory in Massachusetts should be added to the marketing area on the basis of this record. The presently unregulated area in Massachusetts (other than Essex County) included in proponent's proposed area of extension is served almost exclusively by local dealers or by presently regulated handlers. The local dealers serving this territory purchase their milk almost exclusively from Massachusetts dairy farmers. Such milk is purchased at prices established by the Massachusetts Milk Control Commission virtually identical with the Federal order prices. In total only about 2.5 percent of the total milk distributed in this large area is derived from unpriced sources. While the record is not specific with respect to the source of this milk it appears that a significant proportion of such milk will become regulated under the area extension herein adopted.

Proponents contended that failure to include the additional Massachusetts territory will encourage handlers presently dealing in unpriced milk to make arrangements by which they could circumvent the effect of State Milk Control pricing in essentially the same manner in which this was accomplished in southern New Hampshire and in Essex County.

While this is, of course, a possibility it is significant that such action has not been taken. In general the nonfederally regulated handlers serving the area are small and their distribution is local in character. In total their milk supply originates from approximately 75 scattered dairy farmers. Under present circumstances there appears to be an insufficient concentration of population to encourage local dealers to jeopardize the stability of their local markets with the use of unpriced milk.

The marketing area proposed herein is the basic sales area of the handlers to be regulated and handlers presently regulated under the order. In addition, as hereinbefore indicated all milk to be regulated in the proposed marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products.

Exceptors contended that the extension of the marketing area into New Hampshire as recommended would obviate any need for extension of the marketing area to include the remainder of Essex County. Such extension into New Hampshire presumably would bring under regulation all but one of the substantial handlers selling milk in Essex

County and currently procuring milk from unpriced sources. However, even after bringing such handlers under regulation, approximately one-fifth of the milk sold in the unregulated portion of Essex County still would be derived from unpriced sources. This is, of course, in marked contrast to the situation that prevails in the other areas of Massachusetts not recommended for inclusion in the marketing area. In these areas only about 2.5 percent of the milk distributed is from unpriced sources. Additionally, after extension of the marketing area into New Hampshire as proposed a significant portion of this small volume of unpriced milk would likely become regulated.

Under the present market structure, if this portion of Essex County were omitted from the marketing area and southern New Hampshire were included, most if not all of the unpriced milk that would be sold in the unregulated portion would be sold by a single handler in direct competition with handlers and dealers all paying the higher prices established by either Federal or State regulations. In such circumstances those handlers who are currently distributing unpriced milk, but who would be regulated with respect to their New Hampshire operations, would be under strong competitive pressure to find some means of holding their sales in Essex County against unregulated competition. Most of these handlers are multiple plant handlers and this could only result in a continuation of current buying practices of the handlers involved to the detriment of producers generally.

As previously indicated, the marketing area boundaries have been drawn with the purpose of minimizing overlapping sales areas of regulated handlers with unregulated handlers who would have a procurement advantage. It would be grossly inequitable to the handlers being brought under regulation by the New Hampshire extension not to regulate their most substantial competitor in Essex County. Regulation of the Essex County area along with the New Hampshire area would in no way change such handler's relative competitive position with respect to his major competitors. While he has sales in certain other nearby unregulated areas of Masachusetts his competition there is from fully regulated handlers or from local handlers who are buying their milk from local producers at the State order prices, identical to the Federal order prices.

The handler in question has only a single local producer and buys the bulk of his milk requirements from unregulated sources in Vermont at prices related to the Massachusetts-Rhode Island blend prices. The regulation of the remaining portion of Essex County is essential if the order is to be effective in implementing the declared purposes of the Agricultural Marketing Agreement Act.

All producer milk received at regulated plants must be made subject to classified pricing under the order regardless of whether it is disposed of within or outside the marketing area. Otherwise, the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" sales were subject to classification, pricing and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chose to his outside sales. He thereby could reduce the average cost of all his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. Unless all milk of such a handler were fully regulated under the order, he would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler was free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market.

It is essential, therefore, that the order price all the milk received at a pool plant regardless of the point of disposition. Further, the level of price should be identical on Class I sales inside and outside the marketing area.

2. Modification of the pooling provisions.

(a) *Exempt distributing plants.* The "exempt distributing plant" definition in the New England orders should not be amended to increase the exemption level on route disposition in the marketing area. Currently the orders exempt from regulation a plant which meets all of the requirements for status as a pool distributing plant except that its route disposition in the marketing area during the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

A cooperative association which operates no distributing plants proposed that the 300-quart daily average exemption be raised to 500 quarts and that the 700-quart maximum volume on any day as an exemption measurement be removed under each of the respective orders. The spokesman for the proponent cooperative indicated, however, that the proposal was intended only with respect to the Massachusetts-Rhode Island order. He contended that because of the numerous small New Hampshire towns being considered for inclusion in the marketing area it was likely that a number of small distributors could be involved and that it might be well to allow them to be left unregulated. He further contended that the present 300-quart exemption limit is too small for the operation of even one efficient route.

The existing exemption has generally accommodated the small handlers in both the Connecticut and Massachusetts-Rhode Island markets. No one other than the proponent supported the proposal or testified as to any present or prospective hardship as a result of the present exemption figure. Proponent had no specific knowledge of the situation in the proposed area of extension nor did he substantiate that it was in fact any different from that in the present marketing area. In addition, there was no showing of the possible impact of the adoption of a higher exemption on presently regulated handlers. Accordingly the proposal is denied.

(b) *Supply plants.* Both the Massachusetts-Rhode Island and Connecticut orders should be amended to increase the shipping requirements for the pooling of supply plants during the months of August through November from 15 percent to 25 percent. In addition, pooling status for any plant (supply or distributing) under the Massachusetts-Rhode Island order should be conditioned on the plant's handling no milk subject to a commitment limiting its availability for use as Class I milk. No change should be made in the supply plant definition which would result in a bulk reload point, which otherwise met the supply plant definition, not qualifying as a plant if facilities are there maintained and used for washing and sanitizing cans or tank trucks. Also no further exemption should be provided to remove the possibility of "exempt distributing plants" and "distributing plants for unregulated markets" being pooled as supply plants.

The present plant definition under the Massachusetts-Rhode Island order specifically excepts a bulk reload point at which facilities for washing and sanitizing cans or tank trucks are not maintained and used. This provision was adopted under the Greater Boston, Merrimack Valley, Springfield, and Worcester, Mass., orders in 1959 to retain insofar as possible, as points of pricing, the then existing plant locations. This amendment was intended to make clear that a reload facility to qualify as a point of pricing must consist of land and buildings with facilities and equipment for handling or processing milk, operated by an individual or individuals engaged in receiving milk for resale or manufacture into milk products and that the washing and sanitizing of trucks must be done on the premises.

Proponents argued on the one hand that their milk is in reality associated with city plants and that a reload point should not be a pricing point simply because tank trucks were washed and sanitized there. On the other hand, they argued that it was very easy to accommodate to the requirements of the order and hence each handler essentially was in a position to determine the point of pricing on his bulk farm tank milk. It was proposed that a handler be allowed to designate whether his reload point should be considered a plant or in the alternative, that a stationary holding tank or some other substantial facility be required for plant status.

While there can be no question but that the present requirement for washing and sanitizing of trucks in large measure places the handler in a position of himself determining the point of pricing on his farm bulk tank milk, it is equally apparent that the alternatives proposed would have the same result. There is no indication on the record that the present

provisions have in any substantial way impeded the normal operations of regulated handlers or resulted in inappropriate pricing of producer milk. It is not clear why a handler would desire that his milk be priced at city plants rather than at transfer points, particularly in view of later findings that the differential between the 201–210-mile zone (basic price) and the nearby zone has been 7 cents more than the cost of transporting the milk plus the additional cost of receiving milk through a country plant. Under any circumstances the evidence on this record does not provide an adequate basis for changing the plant definition.

Under the existing provisions of the Massachusetts-Rhode Island and Connecticut orders a supply plant is required to ship 15 percent of its total receipts of producer milk to pool distributing plants under these orders and is pooled under the order under which the greater quantity of such shipments is made. Provision is further made for system pooling of supply plants, under which individual plants in a system need meet the 15 percent shipping requirements in only one month of July through November to qualify for pooling in each month of that period. A plant which was pooled under one of the New England orders in at least 2 of the months of July through November and which would have been pooled in the remaining months except that it was a pool plant under the New York-New Jersey order has automatic pooling status in the months of December through June under that New England order to which it made the greater qualifying shipments in the July–November period.

Various proposals were made which ranged from increasing the shipping requirements for pool supply plants in the months of July through November only to increasing the requirements to as much as 40 percent in all months. Another proposal, abandoned at the hearing, would have provided more flexible pooling requirements in the months of July through November for a supply plant which otherwise would not be a pool plant under any Federal order but which held automatic pooling status under one of the New England orders in the immediately preceding months of December through June.

Essentially all of the milk in the milkshed is pooled under one or the other of the New England orders except that which has a preferential Class I market in a local unregulated market. The present pooling provisions were constructed to bring about this result.

To supply the fluid market it is essential that supply plants as a whole ship far in excess of the minimum requirements for pooling. During the period May 1965 through April 1966 the total Class I usage of the Massachusetts-Rhode Island market varied from a low of 50.7 percent (May) to 70 percent (November). Only a very limited quantity of country plant milk is disposed of for Class I use upcountry. For all practical purposes it must be moved to city distributing plants if it is to be disposed of for Class I use. During the May 1965–April 1966 period Class I usage of country plant milk under the Massachusetts-Rhode Island order varied from a low of 38.1 percent (April) to a high of 61.8 percent (November). During this period the total Class I usage of the Connecticut market varied from a low of 71.1 percent (May) to 88.1 percent (November). Hence there can be no question but that supply plants generally would have no difficulty in meeting more substantial shipping requirements.

The basic problem is that the operators of some supply plants under the Massachusetts-Rhode Island order which are primarily manufacturing plants have been reluctant to ship more milk than that necessary to insure pooling status, with the result that in some months of short supply city plant handlers have had considerable difficulty in obtaining necessary milk supplies for fluid use.

While it is desirable that milk not needed for fluid use be processed into manufactured products at country plants, it is essential that such milk be shipped to the city when needed for fluid use. To better insure this result it is concluded that the required shipping percentages during the months of August through November should be increased from 15 percent to 25 percent under both orders. While proponents suggested even higher shipping requirements (as much as 40 percent) it must be recognized that the need for country plant milk varies from month to month and from year to year. Too high a requirement might well result in uneconomic milk shipments solely for the purpose of maintaining pooling status.

In his recommended decision the Deputy Administrator proposed that the shipping requirements be increased from 15 to 25 percent during each of the months of July through November. Exceptors, however, pointed out that increasing these requirements during the month of July could cause milk to be moved to the city when it was not needed.

It was their contention that July is a "swing" month in that with favorable production conditions milk production may hold near the June level and, on the other hand, consumption, which normally would increase, may lag with unfavorable weather. They therefore suggested that the 15 percent requirement be retained for July but that automatic pooling status during the flush months be conditioned upon a plant meeting an average shipping requirement of at least 25 percent for the entire July through November period.

As pointed out previously, the basic problem has been that some supply plants which are primarily manufacturing plants have been reluctant to ship more milk than that necessary to insure pooling status. The Deputy Administrator therefore recommended that the shipping requirements be increased during the short production months to better insure that such milk would be shipped to the city when needed for fluid use.

Because the month of July is a transition month milk may not be in short supply for fluid use. With an increase in shipping requirements supply plants may be forced to ship milk not, in fact, needed for fluid use. As a result, the milk which is shipped for qualifying purposes may be forced into manufacturing uses either at the city plants or at country plants after being back-hauled from a city plant. Such uneconomic movements of milk for manufacturing uses can be avoided by permitting it to move directly to country plants for manufacturing when not needed for fluid use. It is concluded, therefore, that the shipping requirements for pooling of supply plants need not be increased for the month of July.

Exceptor's suggestion regarding the adoption of an average 5-month 25 percent shipping requirement for automatic pool plant status could not have a significant effect in view of the limited additional milk shipments that it would require for qualifying purposes. That is to say, during 4 of the 5 months involved the plant would have to ship at least 25 percent irrespective of the automatic pooling condition. If the plant shipped only 15 percent during July, shipments of approximately 27.5 percent in each of the remaining four months would qualify the plant for automatic pooling during the flush. Such a minor adjustment would have little material value and accordingly should not be adopted.

It must be recognized, in view of the past market utilization and the necessarily flexible pooling provisions which have been provided, that an increase in the shipping requirements from 15 to 25 percent during the months of August through November may not fully implement the desired result. This is particularly true in recognition of the fact that during the May 1965–April 1966 period a minimum of 38.1 percent of the country plant milk was used in Class I.

To fully accomplish the end sought by proponents; i.e., insure the availability of milk when needed, more forceful provisions are needed under the Massachusetts-Rhode Island order. "Call" provisions could be provided which would permit the market administrator to increase the required shipping percentages to conform with the current needs of the market. However, the industry generally opposed the adoption of such provisions. It was argued that the application of a "call" provision would place cooperatives in an unfavorable bargaining position in the sale of their milk, and additionally, that the intended result likely would not be accomplished since any required shipments could be made to one or two of the larger handlers, leaving smaller handlers still inadequately supplied.

A proposal considered at the hearing would preclude the pooling of any plant unless all milk there received was available as needed for Class I use. It is concluded that the problem can best be met by including a provision in the Massachusetts-Rhode Island order providing that

should the market administrator determine that the operator of any plant has entered into an unconditional contract which provides for the delivery of any specified quantity or proportion of such plant's receipts from dairy farmers and of pool milk from other sources for Class II use, the plant shall not be pooled during the month of such ascertainment nor for any subsequent month in which the contract is in force for any part of the month. It is the intent of the order to insure an adequate supply of milk for the fluid market. To assure an adequate supply a reserve, over and above actual Class I disposition, is needed and should appropriately share in the pool even though it may be used as Class II. However, it would be inequitable to pool milk which, in fact, is not available for Class I use and is thereby not a part of the reserve supply. Such a provision can readily be complied with by conditioning contracts for other than Class I disposition on the milk not being needed for Class I use. Clearly, handlers who acquire pool status for their plants should reasonably expect to supply milk for Class I use as the need arises up to the total amount of producer receipts at such plants.

Some cooperatives contended that an increase in the supply plant shipping requirements would weaken their ability to bargain with handlers for handling charges over the minimum order prices. It is not clear why this should result, particularly since the increase in shipping requirements herein provided is well below the percentage of total country plant milk which has in the past been shipped for Class I use. It is recognized that to the extent any cooperative has attempted to maintain a premium structure above the competitive market price in bargaining with handlers for a fluid outlet for its supply plant milk the increase in the shipping requirements may exert some pressure for lower handling charges. However, cooperatives operating manufacturing facilities and who have chosen to associate such facilities with the pool for the purpose of drawing the uniform price must make their milk supply available to the fluid market. They should not presume the right to recover from fluid sales the further profit which they might otherwise gain from the use of the milk in their own manufacturing operation.

During July through November of each year the present order permits system pooling of supply plants operated by the same handler if certain conditions are met. In general these conditions provide that: (1) the handler must submit a written request each month for continuation of the pool supply plant status his plant held the previous month, (2) the plant must not qualify as a pool plant under another order and the group of supply plants, considered as a unit, must have met the minimum shipping requirements for supply plants during the month, and (3) for system pooling to qualify during November the plant, considered individually, must have met the supply plant shipping requirements during one of the months of July through October.

No change in this supply plant pooling procedure was recommended. However, exception was taken to the Deputy Administrator's failure to provide a procedure for a continued pooling of a balancing (manufacturing) plant or plants operated by a cooperative which acquires handler status in the handling the farm bulk tank milk of its producers as hereinafter discussed.

Exceptor pointed out that while its member milk is now pooled through its association with either supply plants or distributing plants, supply plants will not have a significant role in the future. When a cooperative association operating a manufacturing plant(s) becomes a handler with respect to the bulk tank milk of its member producers, except that milk associated with its own plants, there will be little need for moving milk through plant facilities prior to its delivery to city bottling plants. Manufacturing facilities will operate almost exclusively as balancing facilities receiving only that milk not needed for fluid uses. In the interest of marketing efficiency it is likely that some producers' milk will move to such plants on a more or less regular basis. Therefore, unless special provision is made for pooling such manufacturing plants the milk regularly moving there from producers could not retain producer milk status unless the plant maintained pool supply plant status through uneconomic shipments in the required percentages to pool distributing plants.

As exceptor-pointed out, most of the milk for which in the future the cooperative will be a handler is now pooled through system pooling of supply plants. It was requested that this scheme of pooling be extended to permit a cooperative to include its balancing plants as part of a group, including such bulk tank milk on which it becomes a handler.

This procedure is concluded to be the most appropriate means for insuring continued orderly pooling of the market's balancing supply.

Under another proposal an "exempt distributing plant" or a "distributing plant for unregulated markets" would not be pooled as a supply plant under the Massachusetts-Rhode Island order even though it made sufficient qualifying shipments to pool plants. Proponents argued that it was inconceivable that the operator of such a plant would intentionally conduct his business to qualify as a supply plant and hence such a plant should not be jeopardized by the possibility of acquiring pool status in the disposition of its surplus.

Exemption from regulation as a distributing plant is not a basis for exemption as a supply plant. The exemption as a distributing plant is predicated on the fact that the plant either has insufficient distribution in the marketing area to be a competitive factor; i.e., less than 300 quarts per day or that it does not meet the basic pooling requirements of having at least 40 percent of its total receipts of fluid milk products in Class I and at least 10 percent of such total receipts in route disposition within the marketing area. However, when an otherwise unregulated distributing plant makes sufficient shipments to pool distributing plants to qualify as a pool supply plant it may not appropriately be distinguished from any other pool supply plant. Obviously, the intent of the proposal was to provide greater flexibility in the operation of nonpool distributing plants. These plants compete with fully regulated plants both with respect to route sales and in procurement. While exemption from regulation is provided on the basis of the nature of their route distribution such exemption cannot appropriately be construed as a basis for immunity under all circumstances.

The order provides a reasonable basis whereby certain distributing plants can maintain nonpool status. If such status is desired the plants must be operated in conformity with the existing rules. While greater flexibility of operation might better accommodate the interest of certain nonpool handlers it cannot be concluded that it would tend to further promote and maintain orderly marketing. Accordingly, the request for further exemption is denied.

(c) *Diversions.* The diversion provisions of the Massachusetts-Rhode Island order should be modified to allow a handler who closes a pool plant and begins to receive the milk of producers associated with that plant at another of his pool plants to retain the diversion rights associated with such milk. In addition, milk diverted from a pool plant located in zones 1–14 to a plant located beyond zone 14 should be priced at the zone location of the plant of physical receipt.

The producer definition should be modified to provide greater specificity with respect to the appropriate order to regulate milk diverted to nonpool plants which are other order plants or milk received at pool plants as diverted milk from other order plants.

Currently the order provides, with minor variations, that a handler can only divert milk if he caused milk from the dairy farmer's farm to be moved to the diverting pool plant on the majority of delivery days on which he caused milk to be moved from the farm as producer milk during the 12 months ending with the current month. The order also provides that diverted milk is priced at the zone location of the plant from which it is diverted.

A multiple plant handler proposed that diversion rights associated with producers be transferred along with the producers when one plant operation is discontinued and the producers are moved to another of the handler's pool plants. The sole concern of proponent was to allow a handler to shift producers to another of his pool plants after closing the pool plant to which they normally delivered without having to wait 6 months before any diversion rights could be reacquired on such milk.

The existing provisions, requiring delivery to the diverting plant on the majority of delivery days during the most recent 12-month period, were formulated to assure a bona fide association of milk

with the market and yet permit a handler necessary flexibility to insure efficient handling of the market's reserve supply. For a handler who consolidates the operations of several plants, the present provisions do not accomplish their intended purposes. In many cases they may well impede the efficient handling of milk even though the producers whose milk is involved have already established their association with the market.

The change to allow transfer of diversion rights would be applicable only when a plant operation is discontinued and the producers are transferred to another pool plant of the same handler. Therefore, such a change will in no way circumvent the intent of the present diversion provision and at the same time will remove an unnecessary deterrent to greater operating efficiency. It is concluded therefore that it should be adopted.

Both the Connecticut and Massachusetts-Rhode Island orders provide that, except under specified circumstances, milk received directly from a dairy farmer's farm at a pool plant shall be producer milk. In addition, each order permits diversions to nonpool plants (including plants regulated under another Federal order) and each order excepts from the producer definition any dairy farmer who is a producer under another order. Accordingly, the order which regulates must be resolved by administrative decision in each case of a reported diversion between orders.

It is not apparent that this has resulted in any particular problem in the past. Nevertheless, there can be no question that the incidence of interorder diversions will increase after the implementation of the conclusions set forth in this decision which provide handler status for cooperatives with respect to member bulk tank milk.

The orderly and efficient handling of the reserve milk in the market often requires the direct movement of milk of individual producers to nonpool plants. The direct movement from the farm to the plant of ultimate disposition avoids the expense and handling which would otherwise result if the milk were first delivered to the pool plant where normally received and then transferred to the nonpool plant. When such movements are to unregulated plants or for manufacturing uses to other Federal order plants, they should appropriately be treated as diversions.

When milk is diverted to unregulated plants or for Class II use to an other Federal order plant and is not mandatorily producer milk under the terms of the other order, it can reasonably be presumed to be a part of the diverting market's reserve milk supply. Such diverted milk from Massachusetts-Rhode Island pool plants should appropriately be pooled as milk from producers under the Massachusetts-Rhode Island order. Similarly, when the milk is diverted from an other Federal order plant to a Massachusetts-Rhode Island pool plant for Class II use, it should be permitted to remain pooled as a part of the diverting market's reserve supply.

Under the present assignment sequence milk received in bulk at a supply plant from a plant regulated under another Federal order is almost always assigned to Class II milk. The order also provides for the assignment to Class II of such receipts at a pool distributing plant if the operators of the shipping and receiving plants have both requested such Class II classification and assignment. The application of these provisions must now be broadened to include diversions by a cooperative association in its capacity as a handler on farm bulk tank milk which it causes to be picked up at the farm and moved as diverted milk. In this regard, the Connecticut order also requires modifications.

Under the above assignment procedures there is little possibility that reserve milk not needed in its normal market and which is diverted to another order plant for surplus disposition will be classified as other than Class II. However, in the event that the receiving handler does not have sufficient Class II utilization to cover such Class II assignment, a portion of the milk so moved would necessarily be assigned to Class I. In such a situation it can no longer be reasonably presumed that the diverted milk is in fact a part of the diverting market's reserve supply. When part or all of the milk is used for fluid purposes in the receiving plant, the milk obviously is needed for fluid use in the receiving market and appropriately should be considered a part of that market's fluid supply.

In this regard, however, special consideration must be given to diversions to New York-New Jersey plants. Farm bulk tank milk must be a part of a pool or a partial pool bulk tank unit to be pooled under that order. In the case of a partial unit only that milk classified as Class I-A is pooled. Under such circumstances it is possible that only part of any dairy farmer's milk diverted from the Massachusetts-Rhode Island market would be pooled under Order 2. In such case, denial of producer status under this order to such dairy farmer would cause such dairy farmer to be treated as a "dairy farmer for other markets" with respect to all of his deliveries under this order to the diverting handler. To avoid this result, denial of producer status under this order with respect to milk diverted to another order market should be conditioned on the dairy farmer acquiring producer status under such other order on all of the milk so diverted.

To fully implement these conclusions the producer definition under the Massachusetts-Rhode Island order is amended to provide that a dairy farmer shall be accorded producer status for all milk diverted to an other order plant if it is all there assigned to Class II. In addition, the order is modified to except from the producer definition a dairy farmer with respect to all of his milk diverted to an other order plant if part or all of such milk is assigned to Class I under such other order and all of such milk would be treated as producer milk under such other order. The provision is further amended to provide producer status for a dairy farmer with respect to all milk which is received as diverted milk from another order if any part thereof is assigned to Class I.

Since the Connecticut order excepts a dairy farmer from producer status with respect to milk which is mandatorily pooled under another order no change is required in that order to implement these conclusions with respect to milk which is diverted to or from plants regulated under that order.

Proponent of the proposal to price milk, diverted from a plant in the nearby zone to a plant in a distant zone, at the zone location of the plant of actual receipt contended that such a change was needed to prevent the possibility of a transportation subsidy being paid by the pool and to eliminate any possible gains to handlers operating their own hauling systems. At the hearing proponent's representative modified his proposal so that milk produced on farms within 200 miles of Boston and back-hauled more than 50 miles would be priced at the zone location of the plant from which the milk was diverted. This modification was intended to accommodate situations where milk might be diverted substantial distances to manufacturing facilities.

Under the present order provisions milk produced in distant zones and normally delivered to a city plant may be diverted to local country plants in the area of production and still be priced as if it had been transported to the city plant.

The Class I and blend price zone differentials applicable at any plant location are identical, but the Class II differential is much lower. As a result, the nearer the diverting plant is to Boston the greater is the difference between the applicable blend and Class II differentials. Therefore, when milk is diverted for Class II use, which is normally the case, the pricing of such milk at the diverting plant rather than the more distant plant of physical receipt causes the handler's cost of milk under the order to be increased only slightly. On the other hand, the handler's pool credit and the blend price payable to the producers involved are substantially greater than would be the case if the milk were in fact priced at the plant of physical receipt. Hence the pool absorbs transportation costs which in many circumstances are actually not incurred when producer milk is diverted to a plant more distant from the market but nearer to the producers' farms.

Milk that is diverted will, in most cases, be transported much shorter distances than would otherwise be the case if it were moved to the diverting pool plant. Therefore, it is possible that producers save in transportation costs and yet are paid as if the milk had moved the full distance to the diverting plant. However, in many cases the savings in transportation costs accrue directly to the hauler instead of the producer since he may continue to collect the full hauling charge that was applicable to the longer movement of the milk. Further, if the handler is the hauler he may be the sole beneficiary of the cost savings.

Several examples of handlers being the ultimate recipient of the cost savings were cited by the proponent's representative. In one case the handler diverted milk from his plant located in the nearby plant zone to a plant located in the 21st zone and near the farms of the producers involved. Since the handler continued to deduct the same hauling charge he apparently was able to retain the transportation savings on that diverted milk hauled in his tank trucks.

Although proponent wanted to correct a situation where producers or handlers were profiting at the expense of the pool on savings in hauling costs he did not want to make any change where diverted milk from farms within 200 miles of Boston had to be back-hauled more than 50 miles. He contended that in such cases there may be little or no savings in tranportation and that the producers involved should not have to accept the lower blend price without the compensating reduction in costs. The record does not establish the need for milk to be back-hauled great distances. If it is merely to accommodate an existing arrangement of manufacturing facilities operated by the diverting handler or the producer group, as seems likely, it would be no more fair to the other producers to subsidize such operations from the pool than in other situations to which proponents objected. This modification is therefore denied.

When there is more milk available in the market than is needed for fluid use the total costs associated with handling the excess milk would be lowered substantially by retaining the most distant milk upcountry for manufacturing. That is, the cost of transporting the milk great distances to the city for manufacturing would be avoided. The diversion provisions were designed to encourage this more efficient handling of milk as well as to allow the handler as much flexibility as possible in adjusting producer receipts at his plant to meet his needs. This flexibility permits handlers to divert milk for extended periods of time as long as such diversions do not exceed the majority of days limitation previously referred to. In certain cases the handler could continuously divert milk from the same producers for almost 6 months without exceeding the limitation.

In circumstances where diversions are on a more or less regular basis there is little reason to believe that the hauling rate would not be adjusted downward to reflect the shorter haul or that handlers with their own transportation systems would not realize a savings in hauling costs even though they may not be passed on to producers. However, any gain to individual producers or handlers is financed by all producers if the milk continues to be priced as though received at city plants. It is desirable therefore to deter individual gains at the expense of the pool on diversion operations.

Pricing at the plant of physical receipt of milk diverted from within the 14th zone to more distant plants will tend to implement the efficient handling of reserve milk without undue cost to the pool. Essentially all of the plants located beyond the 14th zone to which diversions likely would be made are manufacturing plants. Hence essentially all of such diversions will be for Class II use and this revision in point of pricing of diverted milk will eliminate much of the transportation subsidy which the pool has borne when milk associated with city plants is diverted to country plants.

It is not necessary to change the point of pricing with respect to milk normally received at country plants or at city plants and which is diverted to plants within the 14th zone. Milk associated with country plants is priced below the price of milk received at nearby plants by the amount of the transportation and extra plant handling required to move such milk to nearby plants. Hence a handler normally experiences no out-of-pocket transportation costs if he elects to divert country plant milk to nearby plants for Class I use. Milk which is associated with nearby plants and which is diverted to other nearby plants is normally utilized for Class I purposes. Since the Class I and blend price differentials are identical there is no element of cost to the pool when milk normally received at nearby plants is diverted to other nearby plants for Class I use, even though the plant of physical receipt may be more distant from the central market than the diverting plant.

Exceptions were filed contending that pricing diverted milk under specified circumstances at the location of the plant of physical receipt would result in undue hardship on handlers in computing producer payments and preparing supporting statements to producers. Exceptors pointed out that on occasion milk from individual producers may be diverted to more than one plant during the month. In any such case the statement accompanying the producer's check would be required to show detailed information regarding volume of milk, butterfat test, and applicable prices for each location of receipts along with the respective hauling charges. This they contend presents a difficult problem for handlers, particularly for those using automatic data processing equipment. They further argued that considerable producer misunderstanding would result since in many cases producers would be unaware of the fact that their milk was being diverted.

It was suggested that some means be found to permit payments to producers on the basis of the applicable prices at the plant of normal receipt. When a handler's pool obligation under the revised order is computed on the basis of the applicable prices at the plant of physical receipt, he is not held responsible for payment to producers for diverted milk on the basis of the blended price applicable at the location of the plant from which diverted. Nevertheless, such basis of payment can appropriately be made permissive under the order. If a handler elects such basis for payment, then the pertinent information supplied to the producer with respect to volume of milk received, the butterfat test thereof, the hauling deductions and the applicable pay price would be reported as if all of the milk were received at the plant of normal receipt.

This optional basis for producer payment is provided for the convenience of handlers and its use should not result in any disadvantage to producers. Therefore, the order should provide that when producers are paid under this option the resulting net payment shall not be less than that which the producer would have received if the option had not been used.

(d) *Certified milk.* The special exemption for certified milk should be removed from the Massachusetts-Rhode Island order.

Presently the order exempts from pooling any milk produced and processed in accordance with the standards established by the American Association of Medical Milk Commissions and disposed of as packaged certified milk or packaged certified skimmed milk.

A group of cooperatives in the market proposed that the special exemption for certified milk be removed from the Massachusetts-Rhode Island order. A spokesman for the group stated that there should be no exemption for Class I milk differing only as to special quality or characteristics since market demand for such a differentiated product should compensate handlers for the added expense of it. He further pointed out that there were no longer any certified milk operations in the market.

In the past certified milk and certified skimmed milk have been exempted on the basis of being noncompetitive with other milk, both on the basis of cost and sales conditions. The exemption was restricted to these two products which were, at the time the exemption was adopted, the only products eligible to carry a certified label and which were permitted to be packaged and marketed without pasteurization.

For reasons not shown on the record the restrictions on the processing and sale of certified milk have been relaxed on certain points since the exemption was granted. The current publication "Methods and Standards for the Production of Certified Milk" contains the regulations pertaining to "certified milk" and was introduced as an exhibit in the hearing record.

Under these regulations there is a wide range of products which may carry the certified label. These included the basic product "certified milk," "certified milk-pasteurized," "certified cream," "certified half and half," "certified fat-free milk," and "special certified milks" among others.

In addition, current standards permit the utilization of new processing technology by allowing milk from certified farms to be processed and/or bottled at another certified farm or at a processing plant that is not a "certified farm." Of course, the specifications for transporting the milk, labeling, and control by the supervising milk commission must be met in these cases. However, from an economic standpoint the ability to make such arrangements greatly reduces any difference between certified milk and

producer milk which is aggregated, processed, and distributed in a conventional manner.

The proposal to remove the exemption with respect to certified milk was opposed by a Vermont based handler producing certified milk who argued that he was exploring the possibility of extending his distribution into the marketing area. In this regard, he recognized that the traditional method of distribution could not accommodate his situation and contemplated testing the potential of direct distribution of his line of certified products through supermarkets in the marketing area.

There can be no question but that such distribution of certified products would be in direct competition with the distribution of similar noncertified products by regulated handlers. While opponent contended that he would necessarily sell his products at a premium of 3 cents per quart over competing milk, this can no longer be presumed nor can it be considered as a prime deterrent against a loss of Class I sales when the product is mass-distributed.

In reality the distribution of certified milk in this market such as opponent contemplates is essentially no different than that of the distribution of a "special" breed milk under a trademark controlled by a producer organization. The possibilities of such schemes to evade pooling under the order are almost unlimited. In many markets there are producer associations which distribute milk under their own brand name, which brand names are registered and are controlled by producer associations. The fact that such milk may be claimed to have superior qualities entailing higher production costs which entitle producers to higher prices is not a compelling argument. The required pooling of such milk cannot be construed as a penalty to the producers thereof. If, in fact, the milk has superior qualities in the eyes of the consumer it can command a premium over competing milk which would tend to offset, to the extent that they exist, higher production or processing costs.

The marketwide pooling arrangement provided under the order contemplates the equitable sharing by all producers of the total proceeds from the sale of their milk computed at the established order prices. The situation which prompted the exemption with respect to certified milk is no longer present in this market. The exemption therefore should be removed to deter its exploitation at some future time.

(e) *Exempt government agency.* The Connecticut order should be amended to exempt from regulation the plants of government agencies distributing fluid milk products in the marketing area. Fluid milk products received by such a plant from a pool plant or a cooperative association in its capacity as a handler should be classified as Class I except for specified cases with respect to Class II uses by the University of Connecticut. Fluid milk products received at a pool plant from such a plant should be Class II.

Limited exemption for State-owned and operated institutions is presently contained in the "exempt milk" provisions of the order. Such exemption applies only with respect to milk which is processed and packaged at a plant operated by a similar institution to the extent that such milk is used only to serve residents of either institution on the premises thereof. In addition the University of Connecticut, as well as certain other State-owned institutions have been exempted from regulation by virtue of the fact that they have operated in conformity with the producer-handler definition.

The University has from time to time purchased pool milk for use in experimental production of manufactured dairy products. Such milk, however, under the terms of the order was classified and priced as Class I milk.

To provide greater flexibility in the operation of its farm and plant in the research and teaching field the University proposed an "exempt government agency provision" under which it and other State-owned and operated institutions would be exempted from regulation. Under their proposal any sale by such an agency to a pool plant would be considered a Class II receipt at such plant and any purchase from a pool plant or cooperative association would be a purchase of Class I milk, except that with respect to the University purchase could be as Class II if both the purchaser and seller so reported to the market administrator.

The University spokesman pointed out that in both classroom and research work they needed milk for manufacture into ice cream, cottage cheese, and Cheddar cheese and for flavor and other research and that it greatly added to the cost of education and research to be required to pay the Class I price for such milk. He further indicated that they would have great difficulty as a pool plant in meeting pool payments under the rules and regulations of the State with respect to fiscal matters; i.e., all checks are issued by the Comptroller.

Information with respect to the specific operations of the University and of other State-owned institutions was not presented on the hearing record. However, it is apparent that the operation of the University's farm and plant are for the purpose of advancing the recognized functions of the State in the public interest. These operations are not in the nature of the operations of proprietary handlers whose regulation is necessary to effectuate the intent of the Act. Accordingly, the requested exemption is appropriate, not only with respect to the University but also for other State-owned and operated institutions and for the same reasons.

If these government agencies should develop a production in excess of their requirements it would normally be a temporary situation or one that was a by-product of other functions. To the extent that such surplus might develop it could not be depended upon by handlers in the market as either a regular supply of milk or a supplemental supply during periods when the market might be in short supply. It would clearly be surplus to the government agency and hence if disposed of to a pool plant appropriately should be allocated first to Class II. Under the terms of the order on any such milk allocated to Class I the pool plant operator would be obligated to the pool for the difference between the Class I and Class II price.

If any such exempt agency receives milk from pool sources (except as specified below) it should be classified as a Class I since such milk will be needed and used for Class I purposes. Special exception, however, is desirable in this regard with respect to pool purchases by the University in recognition of the Class II milk requirements for teaching and research. It is provided therefore, that the University may purchase milk from pool plants or from a cooperative association in its capacity as a handler and have such milk classified as Class II on the basis of a claim by the selling handler, supported by a certification signed by an authorized agent of the University that such milk was used to produce milk products other than fluid milk products or cream.

Under this revised treatment of State-owned and operated institutions there is no longer any need for the limited exemption now contained in the "exempt milk" definition and it is therefore deleted.

(f) *Dairy farmer for other markets.* The Massachusetts-Rhode Island order should be amended to provide that receipts from a "dairy farmer for other markets" shall be considered as a receipt from the plant to which his milk was delivered on the majority of the delivery days in the most recent month.

Under the present order provisions the plant of original receipt of such milk is considered to be the plant to which the milk was delivered on the majority of delivery days in the most recent 12 months. Under normal circumstances a handler causes a dairy farmer to assume producer or nonproducer status by the manner in which such dairy farmer's milk is handled. Handlers operating both pool and nonpool plants often find that when they have excess milk associated with their nonpool operation the excess milk can be most efficiently disposed of by moving it directly from the farm to their pool plant. Milk so received comes within the definition of "dairy farmer for other markets" and under the prescribed allocation procedure is allocated first to Class II. On any of such milk allocated to Class I the handler accounts to the pool at the Class I price and is credited at the Class II price, at the zone prices applicable at the plant of normal receipt.

The plant of majority of days of delivery in the most recent 12 months is designated as the plant of original receipt to insure insofar as possible that any pool obligation on the part of the pool handler would be computed at the location of the nonpool plant. This procedure has entailed considerable administrative

work on the part of the market administrator, particularly in situations where the milk has been received at several nonpool plants. In addition, situations have arisen where a handler has discontinued receiving milk of certain dairy farmers as producer milk and begun receiving it as unregulated milk at a nonpool plant. Under the present order provisions it is possible, in the event that any of such milk is received at a pool plant and allocated to Class I, that the pricing point for determining the handler's pool obligation would in fact be the pool plant. Appropriately, however, the obligation should be determined at the location of his nonpool plant. This can best be accommodated by providing that the milk will be considered as a receipt from the unregulated plant at which the greatest quantity of such milk was received in the most recent month.

Another proposal considered would further amend the "dairy farmer for other markets" definition to include a dairy farmer when more than half of the milk marketed from his farm during the month is not producer milk under any Federal order. This amendment was proposed to deny producer status to dairy farmers whose regular markets are with handlers in unregulated markets but who deliver any milk in excess of their handlers' needs to pool plants of other handlers as producer milk. During the period April 1964–March 1965 an average of 52 producers shipping the majority of their milk to unregulated markets delivered 15,886,000 pounds of milk to pool plants as producer milk.

Under Federal orders generally milk which is received at a pool plant directly from a dairy farmer's farm is accorded producer milk status. Exceptions are made in certain circumstances to deter handlers from pooling the necessary reserve of their unregulated operations. For this reason "dairy farmer for other markets" status is conditioned on the fact that the handler caused milk to be nonpool milk. Continuation of pooling status for the milk which proponent seeks to exclude gives essentially no different result than the effect of pooling milk now excluded under the present definition; i.e., pooling of the reserve supply of an unregulated fluid milk operation. However, in this instance neither the unregulated handler nor the producer is subject to regulation and it is not the unregulated handler who causes the milk to be pooled. Neither can it be presumed that the regulated handler receiving the milk has specific knowledge that he is receiving only a part of a producer's total milk supply. There would be great administrative difficulty under the circumstances in administering a provision which would deny pooling status for such milk since the market administrator could not have the necessary specific knowledge with respect to every producer on the market to insure equitable administration of the provision. Accordingly, the proposal is denied.

(g) *Pool milk definition.* The "pool milk" provision of the Massachusetts-Rhode Island order should be amended to include as "pool milk" any route distribution in the marketing area from a plant regulated under another Federal order to the extent that such milk is not classified and priced under the other order and is in excess of the present exemption for unregulated distributing plants of 700 quarts on any day or a daily average of 300 quarts, whichever is greater.

The "pool milk" definition designates that milk for which a blended price credit is applied in the computation of each handler's pool obligation. This includes, in certain circumstances, receipts at a pool plant from regulated plants under other Federal orders which are not classified and priced under such other orders. The definition, however, does not include milk distributed directly on routes in the marketing area from a regulated plant under an other Federal order which is not classified and priced under such other order. It is possible therefore under the present order for such milk to be distributed in the market without being subject to pricing under any Federal order.

Under the terms of the New York-New Jersey order (Order 2) it is possible for a regulated plant to receive unregulated milk and dispose of such milk as route disposition outside the Order 2 marketing area (in the Massachusetts-Rhode Island marketing area for example) with no monetary obligation to the pool, regardless of the price at which such milk might have been procured. There is presently no route disposition of this nature in the marketing area; nevertheless, its location with respect to New York-New Jersey regulated distributing plants does not preclude such possibility. In such event the milk should appropriately be treated in the identical manner as similar receipts at a pool plant and for the identical reasons set forth by the Assistant Secretary in his decision of October 31, 1963 (28 F.R. 12006) on this matter, official notice of which is taken. Accordingly, the "pool milk" definition is revised to insure this result when the amount of such distribution exceeds the allowable volume of an exempt distributing plant; i.e., 700 quarts in any day or a daily average of 300 quarts, whichever is greater.

3. *Cooperative as a handler on farm bulk tank milk.* The handler definition under the Massachusetts-Rhode Island order should be broadened to include a cooperative association with respect to its operations in delivering the farm bulk tank milk of its producer members directly from the farm to a pool plant or in diverting such milk to a nonpool plant for the account of the association.

The impact of regulation under an order is on handlers. The handler definition identifies those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. The handler who receives milk from producers is held responsible under the terms of the order for reporting receipts and utilization of such milk and for proper payment to producers and to the pool.

Essentially all of the milk produced for this market is handled through farm bulk tanks and moved to the market in tank trucks. After the milk has been pumped from the farm tank into the tank truck and commingled with the milk of other producers there is no opportunity to measure, sample, or reject the milk of an individual producer. Thus, the amount of milk delivered by producers using farm bulk tanks and the butterfat content thereof, can be determined only by measurement at the farm and from milk samples taken at the farm.

In the past in this market hauling has generally been done by the plant operator either in his own trucks or through contract haulers or by independent haulers under contracts negotiated by individual producers. Accordingly, the operator of the pool plant where the milk was initially received directly from the farm, or deemed to have been so received in the case of a diversion, has appropriately been held the responsible handler for accounting purposes and for payments to producers.

Recently one of the larger cooperatives on the market has taken over the hauling of its members' milk. When the pickup is performed by a cooperative association or by a person under contract to or control of such association it is the association which controls the operation with respect to individual producer weights and tests. Accordingly, the association must be the responsible handler unless through agreement between the association and the operator of the pool plant at which the milk is received, filed with the market administrator, the plant operator assumes the role of responsible handler and agrees to purchase the milk on the basis of farm weights and tests. When the cooperative association is the responsible handler the milk is treated as a receipt of producer milk by the cooperative association at a pool plant in the same location as the pool plant at which the milk was physically received. The milk is then treated as a transfer by the cooperative association to the plant operator.

The order should specify, however, that handlers shall pay a cooperative association which is a handler pursuant to § 1001.9(d) at not less than the blended price for the milk received directly from producers' farms. The adoption of this procedure will simplify order accounting and will facilitate any adjustments required when audit by the market administrator discloses an error such as an error in classification.

Payments into and out of the producer settlement fund will be made directly between the regulated handler and the market administrator. This will establish directly the responsibility for accounting for milk and for its payment on the part of the handler. When settlement is made through a cooperative association; i.e., when a handler settles with the cooperative at class prices and the cooperative pays into or out of the producer settlement fund, an unnecessary third party is intruded into the

transaction. By eliminating the cooperative as an intermediary between the regulated handler and the market administrator, with respect to transactions with the producer settlement fund, problems of financial responsibility, enforcement, and subsequent audit adjustments will be greatly reduced.

The cooperative, of course, must be held accountable to the pool for the volume of milk which it picks up, or causes to be picked up at the farm and which it diverts to nonpool plants or which it does not deliver to any plant during the month; i.e., overage, shrinkage and accidental loss, and inventory of milk en route to plants at the end of the month. To simplify accounting procedure insofar as practical such milk should be priced at the zone location of the plant, or plants within the same zone, to which the greatest aggregate quantity of such milk of the cooperative association was moved during the month.

The order currently provides a Class II classification for shrinkage not in excess of 2 percent of the respective quantities of butterfat and skim milk contained in receipts of fluid milk products and cream, exclusive of diverted milk and inventory at the beginning of the month. Hence pool plant operators have had a maximum shrinkage allowance of 2 percent for receiving and processing farm bulk tank milk. The fact that a cooperative association becomes the responsible handler with respect to farm bulk tank milk which it picks up or causes to be picked up at the farm and delivered to a pool plant provides no basis for changing the maximum shrinkage allowed in Class II on such milk. Appropriately, therefore, some means must be provided for a division of the shrinkage allowance when hauling is performed by or on behalf of a cooperative association. The principal proponent supporting handler status for a cooperative association in such capacity proposed a one-half of 1 percent allowance to the cooperative and a one and one-half percent allowance to the pool plant operator. Such a division of shrinkage reflects the experience under Federal orders generally that in a reasonably efficient receiving operation shrinkage should not exceed one-half of 1 percent and in a reasonably efficient processing operation shrinkage experienced should not exceed 1½ percent. Accordingly, the proposal is adopted.

Previously in this market milk has been associated with specific plants and the plant operator controlled the movement of the milk. Diversion privileges were given only the plant operator as a pool handler and were generally conditioned on the receipt of the milk at the diverting plant on the majority of delivery days, during the 12 months ending with the current month, or in the period in which such handler caused milk to be moved from the farms as producer milk. This procedure was adopted to deter the arbitrary shifting of producers between plants of a multiple plant handler for financial gains at the expense of producers.

When a cooperative association controls the pickup of producer milk and acts as the responsible handler on such milk it is necessary for maintaining pooling status on that milk in excess of a proprietary handler's requirements or which he chooses not to receive that the cooperative be given diversion privileges so it may maintain the pool status of the milk when it is moved into manufacturing uses. Under the terms of the current order all milk which has established a bona fide association with the local market is included in the equalization pool. To insure appropriate implementation of this principle under the revised order the handler definition should be sufficiently broad so as to include a cooperative association with respect to producer milk diverted to a nonpool plant for the account of such association. Milk not needed by local handlers can generally be most economically handled by movement directly from the farm to its ultimate destination. Unless the cooperative is permitted to be the handler and divert such milk it is likely that cooperative members would bear the primary burden of carrying the market's reserve supplies, since handlers could accept only that volume of milk needed to meet their immediate requirements and cooperatives would be forced to handle the remaining milk as other than pool milk.

Providing handler status to a cooperative association with respect to milk which it diverts will not only better insure orderly marketing but also will promote efficient utilization of producer milk in the highest available use class since this arrangement will permit a cooperative to divert milk for Class I use to a nonpool plant which milk might otherwise be used or disposed of by proprietary handlers in Class II.

In consideration of the equitable treatment of all producers the limitation on cooperative diversions should, insofar as possible, parallel those accorded proprietary handlers; i.e., the milk must have been delivered to pool plants on the majority of delivery days during the past 12 months during which the cooperative was the responsible handler. To implement orderly administration, milk which a cooperative diverts is considered a receipt in the zone of the pool plant or plants to which the greatest aggregate quantity of the milk of the producers involved was moved during the month. However, when diversion is made from a plant in zones 1–14 to nonpool plants in the 15th zone and beyond, the milk for pricing purpose is, as heretofore discussed, considered a receipt at the plant where physically delivered.

The Connecticut order currently contains provisions intended to implement the administration of the regulation when a cooperative association is performing or directing the pickup and delivery of farm bulk tank milk to pool plants. However, the cooperative may avoid handler responsibility on such milk by simply not electing handler status. Because there is always the probability that farm weights and the tests of farm drawn samples will not agree with the weights and tests of milk delivered to plants there is always the threat of an administrative problem in the application of regulation if the plant operator refuses to accept the farm weights and tests.

As previously stated, when the pickup is conducted by a cooperative association or by a person under contract to or control of such association it is the association which controls the operation with respect to individual producer weights and tests. Accordingly, the association appropriately must be held as the responsible handler unless the plant operator assumes the role of responsible handler and purchases the milk on the basis of farm weights and tests.

The provisions hereinbefore concluded to be appropriate for the Massachusetts-Rhode Island market ostensibly are equally appropriate for the Connecticut order. However, while both producers and most handlers recognized the existing accounting problems under the present order they were equally insistent that proprietary handlers continue to be the responsible handler for farm bulk tank milk in essentially the same manner as in the past since the cooperatives have not generally elected handler status. To minimize the change in order application they argued that the order should specify that the plant operator be held the responsible handler unless he notifies in writing both the market administrator and the cooperative association that he is not accepting that responsibility, in which case the cooperative would necessarily be the responsible handler.

It is not clear why the requested application of the provision could influence handlers' decisions with respect to becoming the responsible handler on farm bulk tank milk picked up and delivered by the cooperative association. Nevertheless, such application does, in fact, provide a clear line of responsibility and will remove the existing problems encountered under the current order in the accountability for milk because the cooperative association has not elected handler status on milk which it causes to be picked up and delivered to pool plants. Accordingly, it is adopted.

Local cooperative interests objected to any change in the handler status of cooperatives with respect to member bulk tank milk hauled in tank trucks owned or controlled by the cooperative. They contended that affixing the final responsibility on the cooperative for such milk if the receiving plant did not accept the responsibility would force them to bargain with the receiving handler to obtain a charge above minimum prices for services performed with regard to this milk. They further contended that if the final responsibility were fixed upon the cooperative, the order should specify a sufficiently higher price for this milk to assure the cooperative of being reimbursed for services performed, such as milk sampling and testing, and quality control.

In the presence of Federal regulation producers are guaranteed the minimum order prices for their milk. Therefore, it must be presumed that a cooperative's decision to haul its members' milk is

made in the interest of operating efficiency, to retain effective control of the milk in the interest of maintaining or improving the cooperative's bargaining position with its buying handlers and/or to provide the flexibility of operation necessary to insure disposition of the milk in the highest available use. Prior to the advent of farm bulk tank handling each producer was generally associated with a specific handler or plant and normally his milk moved to that outlet regardless of the use (either fluid or manufacturing) by such handler. Farm bulk tank handling greatly increased the flexibility of marketing. For this reason many cooperatives have considered it essential that they control the hauling of their members' milk. As previously stated, under such circumstance it is the cooperative which controls the operation with respect to individual producer weights and tests. Accordingly, the cooperative must assume the role of responsible handler unless the operator of the receiving plant accepts responsibility of accounting for the milk on the basis of farm weights and butterfat tests of farm drawn samples.

When the cooperative acts as the responsible handler it is probable that it also performs some related services which otherwise the handler would necessarily perform at some cost over and above the order class price. Under usual circumstances it is to be expected that a cooperative controlling its milk supply would be able to bargain effectively with handlers for the cost of such services. Its ability in this regard is obviously dependent on the competitive market situation.

Because milk can move freely between regulated markets it is to be expected that as among the northeastern Federal order markets, producers, either individually or through their cooperative associations, will actively seek an outlet for their milk in that market where returns are greatest. Proprietary handlers, on the other hand, can be expected to seek out the most economical sources of milk supply. Hence any attempt to structure the cost of services rendered by local cooperatives into the pricing scheme of the Connecticut order could seriously hamper such cooperatives in the sale of their members' milk. When handlers purchase milk from each other they must reach a common understanding on the sale price if such sale is consummated. There is no apparent reason why cooperatives cannot be equally effective in their dealings with handlers. Notwithstanding the position of cooperatives in this matter, it is concluded that the best interest of producers will be served by continuation of the present pricing structure. Accordingly, the request to establish a premium over the Class I price to be paid by handlers on farm bulk tank milk for which a cooperative is the handler is denied.

4. *Definition and treatment of producer-handlers.* The definition and treatment of producer-handlers under the Massachusetts-Rhode Island order should not be modified on the basis of this record. The provisions of the Connecticut order should be modified only to the extent of permitting a producer-handler to purchase from outside sources, either pool or nonpool, nonfat dry milk solids for use in fortification of fluid milk products.

The Massachusetts-Rhode Island order provides, among other conditions, that a producer-handler may receive no fluid milk products except from his own production and pool plants under any New England Federal order. If his receipts from own production and total route sales each exceed 2,150 pounds per day during the month his receipts from New England order pool plants may not exceed 2 percent of his receipts from own production.

While the Connecticut order, with certain exceptions with respect to State-owned and operated institutions, limits a producer-handler's sources of milk supply to own production and fluid milk products transferred from pool plants, such a person is not limited with respect to the extent of his receipts from pool plants.

A number of proposals were made to change the producer-handler provisions in one or both of the orders. Certain of the proposals would provide that there be no separate treatment under the orders of producer-handlers in their capacity as handlers, but would provide instead an exemption from pooling of a handler's own farm production within prescribed volume limitations. Another proposal would permit producer-handlers to buy unlimited quantities of milk during the months of September through November.

Other proposals would amend the Massachusetts-Rhode Island order to (1) fully regulate producer-handlers above a specified size, (2) permit producer-distributors below a specified size to buy and sell milk to each other, and (3) exempt own farm production and permit unrestricted purchases from regulated sources. Still other proposals would amend the Connecticut order to (1) set a volume limitation of 75,000 pounds in any month which a producer-handler could buy from pool sources and retain his status, and (2) permit a producer-handler to purchase nonfat dry milk and cream for fortification and standardization purposes.

The status and treatment of producer-handlers under the Massachusetts Federal orders have been a consideration at numerous past hearings. The producer-handler provisions of the existing order, adopted on the basis of the record of the merger hearing held in January and February 1963, are substantially those previously contained in the separate Boston, Southeastern New England, Springfield and Worcester orders. The exemption of producer-handlers from the pooling and pricing provisions of the order is predicated on the self-sufficiency of the combined production, processing and distribution operation of such person. When such an individual ceases to be self-sufficient and relies on sources other than own production for any significant portion of his Class I needs his operation is, in fact, indistinguishable from that of handlers whose operations are fully regulated under the order. Appropriately, his treatment as a producer and as a handler then should be no different than that of other producers and of other regulated handlers.

When producer-handlers produce, process, and distribute their own farm production other producers do not share in their Class I sales. To the extent that producer-handlers acquire pool milk to supplement their own production producers under the order bear the full burden of carrying the necessary reserve supplies associated with such milk. To permit a producer-handler to purchase substantial, or unlimited quantities of supplemental milk would substantially eliminate the normal risks which are associated with a combined own production-distribution business. A producer-handler could aggressively seek additional Class I outlets without risking production expansion until the new outlets were assured. Under such an arrangement a producer-handler would be a continuing threat to orderly marketing and regular producers could experience a continuing loss of their Class I market to such individuals.

Certain producer-handlers complained of production costs and labor difficulties which they argued should be recognized through liberalization of the present order provisions to permit greater purchases of supplemental milk. They presented billings to substantiate their contention that supplemental pool purchases cost approximately $1 per hundredweight over the established order prices. It was their position that cost alone was an effective deterrent on purchases of such supplemental milk. They argued that the need for any significant purchases results from unusual and costly production problems, and that such a situation in conjunction with the cost of the supplemental milk would insure that a producer-handler would have no competitive advantage over pool handlers. They further argued that producer-handlers are severely penalized if they exceed allowable purchases by being required to pool their own production.

The production problems of producer-handlers are no different from those of producers who are equally beset with higher costs and labor problems. As previously stated producer-handler status is conditioned on the concept of self-sufficiency. It is not unusual that small lot, spot purchases command a substantial premium. However, there is no reason to conclude that purchases of significant quantities of milk on a regular basis would be any more costly to a producer-handler than to any other handler. Under any circumstance, premiums paid by a producer-handler for pool purchases do not accrue to producers as a whole, and hence such producers receive no compensation to offset the costs of carrying the necessary reserves associated with such milk.

Loss of producer-handler status in any particular month, or months, cannot be

viewed as unreasonable since the individual's separate treatment as a producer and as a handler is identical to that of other producers and of other handlers. Further, status as a producer-handler is reestablished in the first month in which the operation returns to self-sufficiency.

The removal of the present basis for producer-handler exemption and the substitution therefor of a pool exemption of a limited quantity of a handler's own farm production was proposed as the most appropriate means by which regulatory treatment should be applied to operations of producer-handlers. However, there was no evidence that producer-handlers in the Massachusetts-Rhode Island market are adversely affecting the competitive position of either pool handlers or producers under the existing regulation or that the proposed exemption of specific quantities of own farm production would in any way implement administration of the order, enhance overall producer returns or insure more orderly marketing.

The definition and treatment of producer-handlers under the Connecticut order differs from that under the Massachusetts-Rhode Island order in that the concept of self-sufficiency is not employed. Connecticut producer-handlers have had the opportunity to purchase unlimited quantities of fluid milk products from pool plants. However, they are restricted in that supplemental purchases for fluid use must be in the form of fluid milk products.

The basic difference in treatment of producer-handlers under the Connecticut order as compared to Massachusetts-Rhode Island primarily reflects the unique position which such individuals have historically held in the Connecticut market and the fact that they have not engaged in practices which would undermine or disrupt the local market.

The general tranquillity which has existed in the market between producer-handlers, handlers and producers has been disturbed with the recent change in status of a very substantial handler from that of a pool handler buying all of his milk from producers and other pool handlers to that of a producer-handler. Connecticut producer interests made several attempts during the hearing to frame a proposal which would deny producer-handler status to this individual without affecting the status of any other producer-handler presently in the market. Their final suggestion in this regard was a proposed 75,000-pound limitation on the volume of fluid milk products which a producer-handler could purchase from pool plants during the month.

The record reveals no market instability or threat of market instability resulting from the change in status of this handler. While the precise size of his operation was not revealed it is apparent that he is one of the larger handlers in the market. It is also apparent that his own farm production is a relatively minor portion of his total fluid requirements. Based on information contained in the record it is estimated that his total Class I sales exceed 4 million pounds monthly and own farm production is about 700,000 pounds.

Since all pool purchases by a producer-handler are mandatorily classified as Class I under the terms of the order, own farm production must absorb any necessary reserve and Class II usage in his plant. Under the existing situation it is unlikely that the handler realizes any significantly greater return on his own farm production as a producer-handler than would be returned to him as a producer under the order since the average utilization of producer milk approximates 79 percent. There is, therefore, no apparent need at this time for the type of action proposed.

If such handler should in the future change his operation through substantial expansion of his production facilities while using pool purchases for the purpose of removing risks which otherwise would be involved in expanding production and distribution or for the purpose of balancing day-to-day and seasonal variations in supplies and sales, amendment of the producer-handler definition to embrace a self-sufficiency concept such as contained in the Massachusetts-Rhode Island order might appropriately be considered.

The University of Connecticut proposed that the order be amended to permit producer-handlers to purchase nonfat milk solids for use in fortification of fluid milk products and to purchase cream for use in standardization of fluid milk products. This proposal was based upon their own special need as a research and teaching institution as well as upon the need of producer-handlers in general.

The special need of the University is dealt with through special exemption elsewhere in this decision, and therefore, is not discussed further in this section.

At the present time a producer-handler's milk supply is restricted to own farm production and purchases of fluid milk products from pool plants. Hence, any fortification or standardization of fluid milk products on the part of producer-handlers must be done with products produced in their own plants.

The University spokesman pointed out that fortification of several of the fluid milk products is necessary from a competitive standpoint and that it is too costly for a producer-handler to maintain drying or condensing equipment for this purpose. However, he did not identify like problems with cream for standardization nor did he show any need in the market for allowing such a change.

It is concluded on the basis of this record that there is no need for any change in the order to allow for the purchase of cream for use in standardization of fluid milk products. On the other hand, it is recognized that fortification of certain of the fluid milk products may be essential for competitive survival and that current restrictions on the purchase of nonfat dry milk for fortification by producer-handlers may be unnecessarily burdensome. It is unreasonable to expect that a producer-handler could maintain drying equipment solely for the purpose of processing nonfat dry milk for fortification.

Since fortification, in fact, adds only slightly to the volume of product there can be no significant loss to the pool in permitting producer-handlers to purchase powder for this purpose. It would, of course, be inappropriate to permit producer-handlers to purchase powder for reconstitution purposes. Should such a situation occur it is intended that loss of producer-handler status should result. As a pool handler such individual would then be required to pool his own farm production and make appropriate equalization payment on the volume of reconstituted fluid milk products.

5. *Classification and assignment provisions.* The proposal to change the fluid milk products definition in the Massachusetts-Rhode Island order to exclude any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 16 percent butterfat from the definition should be denied.

Currently, the order provides that 50 percent of the quantity of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 16 percent butterfat is classified as Class II milk while the remaining 50 percent is treated as a fluid milk product classified as Class I. Under the proposal the 50 percent of any such mixture now classified as Class I milk would be placed in the Class II category.

A representative of New England Milk Dealers, Inc., testified that such a change was necessary to lower the cost of the product to handlers who would then be able to lower the selling price and thereby make the mixture more competitive with similar products using vegetable fats.

No specific evidence was presented at the hearing concerning the encroachment of competing products on the sales of the mixtures nor was any evidence presented concerning the competitive nature of the products other than a pricing advantage. In this regard, the representative testified that the raw product cost of the vegetable fat product was about 12 cents per quart while the raw product cost of a 12 percent butterfat product was about 25 cents per quart. He also stated that a change in the classification of the 50 percent quantity of the mixture remaining in Class I to Class II would reduce the raw product cost by about three cents.

Producers opposed any change in the classification of half and half on the grounds that a Class II classification is not compatible with the concept of the classified pricing scheme in that "half and half" is required by the appropriate health authorities to be made from milk and milk products received from approved sources of supply and that the product is sold in direct competition with other fluid milk products in Class I.

Market competition from a vegetable base (or any nondairy substitute) product is not an appropriate basis for determining the classification of a fluid milk product. Under the classification scheme employed under Federal orders the fluid milk products classified as Class I are

those which are required by the appropriate health authorities in the marketing area to be made of milk products from approved sources. The extra cost incurred by producers in producing quality milk and in delivering it to market in the condition and in the quantity needed by the market necessitates a price for milk used for fluid uses somewhat above the price of milk used for manufacturing products. The higher price must be at a level which will provide sufficient incentive to producers through the uniform price to encourage the production of those quantities of milk needed for Class I plus the necessary reserve to cover daily fluctuations in market demand.

The existing split classification of half and half was adopted in recognition of the fact that consumers and commercial customers (restaurants, etc.) could readily purchase fluid skim milk (Class I) and cream (Class II) and combine them to make half and half if there was an economic incentive to do so. The present pricing structure therefore was adopted in recognition of this competitive market situation. This record provides no basis for any change in the classification of "half and half" and the request to do so is denied.

The proposal to amend the Massachusetts-Rhode Island and Connecticut orders to include consumer packaged milk shake mixes as a fluid milk product should be denied.

Several producer associations proposed to substitute for the wording in the fluid milk products definition which excludes "ice cream mix, ice milk mix, and milk shake base mix" the words "frozen dairy product mixes." As brought out at the hearing the intended effect of such a word substitution was to include as a fluid milk product any milk shake mix that was packaged in a consumer container for consumption without any additional additives being used.

At the present time there are products on the market sold in consumer type packages the ingredients of which are essentially the same as milk shake base mixes sold to dairy stores, soda fountains and similar establishments and for which the orders specify a Class II classification. These products are considered the same as a milk shake base mix and therefore have not been considered a fluid milk product under the terms of the respective orders.

Although proponents contended that such products were in direct competition with chocolate milk, chocolate drink, and conventional milk shakes the record evidence does not indicate that this is the case. Rather, the empirical evidence cited by a handler's representative would indicate that there is little, if any, problem in this area. In addition, there was no evidence presented to show what the volume of sales of this product are nor how fast the sales are increasing.

Milk shake mix is a product that is quite comparable to ice cream mix. Apparently, because of this similarity the local health authorities in both Massachusetts and Connecticut have placed it in the same health category as ice cream. Since there is no requirement that the product be made from approved milk supplies it could be made in plants anywhere in the country and sold in the marketing area either directly on routes, through jobbers or grocery chains or through presently regulated handlers. Under such circumstances there would be insurmountable problems in order administration if such products were included within the fluid milk definition and classified as Class I milk. Accordingly, the request for the inclusion of such products in the fluid milk definition is denied.

The Massachusetts-Rhode Island order should be amended to clarify the assignment provisions as they apply to milk unfit for human consumption which is received from dairy farmers for salvage purposes only.

The assignment provisions provide that skim milk and butterfat in milk products other than fluid milk products received from dairy farmers shall be assigned to Class II. This wording was adopted to permit handlers to accept for manufacturing uses milk unfit for human consumption without including such milk in the pool.

It is recognized that a dairy farmer necessarily is confronted with a disposal problem when for some quality reason the handler cannot accept his milk in his normal operations. However, in Federal orders generally, milk which a handler receives directly from the farm at a pool plant is considered a receipt of producer milk. This presumes that if the applicable health department permits the milk to be received in the regular plant operation it does, in fact, have the necessary health approval. Nevertheless, it is possible that handlers operating separate manufacturing facilities which facilities may carry health approval to supply milk to the fluid market, can under certain circumstances utilize milk in such facilities which cannot be disposed of for fluid use. Under such circumstances there is no reason why a handler and a dairy farmer in the unfortunate circumstance of having milk unfit for human consumption should not be permitted to cooperate in the disposition of such milk for salvage purposes. However, appropriate safeguards must be provided both for the producer and the pool so that a handler cannot arbitrarily initially refuse to accept a producer's milk solely for the purpose of acquiring such milk outside the framework of the order for Class II use.

This can be appropriately accomplished by requiring that the milk must have been rejected at the farm in the course of normal pickup operations, segregated therefrom, and accepted by the handler only as salvage product rather than as milk. Further, the producer definition should be modified to specifically exclude a dairy farmer with respect to such salvage milk. These clarifications reflect no change from the present treatment of such milk under the existing order. Nevertheless, it is desirable that the provisions with respect to the treatment of salvage milk be stated in more explicit language to prevent any misunderstanding as to their application.

The Massachusetts-Rhode Island and Connecticut orders should be amended to provide a new basis of assignment with respect to receipts of bulk milk at pool distributing plants from plants fully regulated under another Federal order. To the extent that such receipts from other Federal order plants are not offset by similar shipments to such other Federal order plants or are not assigned to Class II by agreement, the orders should provide that such milk shall be assigned pro rata to classes of use. Such pro rata assignment should be made according to the lower of either the market average utilization as estimated by the market administrator or the utilization of the milk remaining in each class at all of the handler's pool plants but in no case should the quantities of butterfat and skim milk assigned to Class II milk exceed the respective quantities remaining in Class II at all of his plants.

The orders presently provide only for assigning such receipts in proportion to the respective remaining pounds in each class at all of the handler's pool plants. As pointed out by the cooperative proponents this procedure under certain circumstances allows producers associated with other Federal markets to share in the New England order Class I sales to a greater extent than do local producers. That is, local producers must bear an unduly large portion of the reserve supply burden because they share in the market sales at the market average utilization while other Federal order producers can share at a higher rate of Class I sales and thus bear a lower share of the reserves, depending upon the receiving handler's utilization.

The only situations that this amendment will affect are those in which a handler who operates a distributing plant has both Class I and Class II sales and receives part of his milk from producers under the order and part in bulk from other Federal orders. For these plants the reserve supply is included, in part, in the receiving market and in part in the shipping market. The present order provisions do not fully recognize this sharing of the reserve between local producers and other order producers since these provisions provide only for prorating bulk milk shipments from other Federal orders over the classes of utilization of the receiving handler. By assigning such Federal order receipts on the basis of either the marketwide or the handler's utilization, whichever results in the greater Class II assignment, the local producers will not be required to bear a disproportionate share of the reserve.

If the milk imported by a multiple plant handler is assigned only to the receiving plant's utilization, such assignment could reduce the handler's percentage of producer milk in Class I in his system to a greater extent than if assignment were applied over the whole system. Therefore, to prevent a multiple plant handler from discriminating against local producers by importing milk into his high utilization plant, assignments of interorder bulk milk should

continue to be made over all utilization of milk at all the handler's regulated plants in the receiving market.

By limiting the quantity assigned to Class II to the actual quantity utilized as Class II by the receiving handler the order will not assess an additional cost on milk assigned to Class II in excess of a handler's own utilization in that class. It assures also that producers in the shipping market will have their milk classified as Class II in no greater quantity than that actually used by the handler to whom the milk was transferred.

In any month in which bulk milk is received in the market from another order market (without Class II agreement on the part of the handlers involved in the transfer) it will be necessary that the administrator in the shipping market know the classification of such milk on or about the date when handler reports are due under that order. Because the reporting dates under orders are very similar, the administrator of the receiving market will generally not have complete information to compute his exact marketwide utilization of producer milk by the time the classification of a transfer is needed by the administrator in the shipping market. In fact, classification of the receiving market's producer milk will be dependent on the assignment of the other order milk. Since the administrator of the receiving market will have adequate information to assure an estimate very close to the actual marketwide utilization, it is provided that such estimate will be made, when necessary, and publicly announced to the nearest whole percentage and, for this purpose will be final.

In a situation where the local receiving plant and the other order shipping plant have moved bulk milk back and forth during the same month only transfers of milk between the two handlers which are not offset by an equal quantity of milk moved from the local handler to the other order handler need be considered. Such a provision is now provided in the order and should continue to apply.

6. *Class prices*—(a) *Class I price.* No change should be made with respect to the basic point of pricing under the respective orders; i.e., 201–210-mile zone under the Massachusetts-Rhode Island order and nearby zone under the Connecticut order. The factor 0.04041 used in the calculation of the New England dairy ration index component of the pricing formula should be revised to conform with revisions in the dairy ration price series for New England as reported by the Department of Agriculture. The contraseasonal pricing provisions should be removed from the orders and the scheme of adjusting the Class I price level in increments of 22 cents should be abandoned. The snubbing provision in the Class I pricing formula which holds the New England economic index price within a 5-cent range of the New York-New Jersey (Order 2) Class I price (before supply-demand adjustment) should be modified to permit a 9-cent variance between such prices. The additional supplies and sales of the plants associated with the proposed area of extension should not be included in the computation of the supply-demand adjustment factor. Finally, notwithstanding the above conclusions, the Class I price level through April 1968 should be fixed at $6.39 in the 201–210-mile zone and at $6.79 in the nearby zone.

Various proposals which would revise the Class I pricing provisions under one or both orders were considered at the June 20–July 1, 1966, hearing. Such proposals would: (1) Provide for f.o.b. market pricing under the Massachusetts-Rhode Island market; (2) continue the present 21st zone pricing but raise the basic (21st zone) price by 7 cents; (3) provide for farm pricing of farm bulk tank milk with no plant hauling allowance; (4) provide a transition provision in the supply-demand adjustment mechanism to eliminate possible skew because of additional receipts and sales associated with the marketing area extension; and (5) adjust the base period factor used in the computation of the dairy ration index to conform with the Department's revision of the dairy ration price series.

Four regional hearings were held during the week of April 10, 1967, to consider Class I price levels under all but three Federal orders. The regional hearing held at Washington, D.C., during April 14–15, 1967, covered, among others, both the Connecticut and Massachusetts-Rhode Island markets. For the Massachusetts-Rhode Island market this was a limited reopening of the June 20–July 1, 1966, hearing.

On April 25, 1967, a decision based on the April hearing, set the prices in Massachusetts-Rhode Island and Connecticut at $6.35 and $6.82, respectively. In establishing such prices the Assistant Secretary recognized that several of the issues considered at the June–July 1966 hearing involved modifications of the Class I pricing formula and that a decision on these matters was still pending.

Proposals to amend the Massachusetts-Rhode Island order to provide for (1) f.o.b. market pricing and (2) continuation of the 21st zone as the basic point of pricing with a 7-cent upward adjustment in the basic price level were both directed to the same end; i.e., integration into the pricing scheme of a 7-cent reduction in differential pricing between the 21st zone and the nearby zone without affecting the price in the nearby zone. Proponents for nearby zone pricing contended that a substantial and continuously increasing proportion of producer milk was moving directly from the farm to city plants and hence prices appropriately should be announced f.o.b. market to reflect this situation and to facilitate price comparisons with prices under the Connecticut order.

Traditionally, the 21st zone has been the basic point of pricing in the Massachusetts-Rhode Island market and both producers and handlers customarily use the announced prices for the 21st zone in making price comparisons with the adjacent New York-New Jersey market. Also, about half the producer milk is still being received at country plants. Since the actions herein recommended will provide the identical pricing at each zone which would prevail under nearby zone pricing it is concluded that no change need be made in the basic point of pricing on the basis of this record. Nevertheless, to facilitate price comparisons between Federal orders generally, consideration should be given to the possible announcement of prices f.o.b. market under both the Massachusetts-Rhode Island and New York-New Jersey orders at any hearing called to review interorder price alignment as between these markets.

Proposals to price milk at the farm or milk house, to zone such milk house according to individual or town location based upon Boston or other suitable central points, and to provide that no deduction from the producer price be permitted for hauling or other related services by the handler were supported by a number of producers and by a cooperative primarily associated with the New York market. Little evidence was introduced relative to a need for such changes in the Massachusetts-Rhode Island or Connecticut markets.

The individual producers supported the proposals generally on the basis that such amendments would provide free hauling from farm to plant and, thus, would relieve to some extent the effects of rising production costs. This in itself is not a valid consideration for a change in the point of pricing. The prices established under the order are those concluded to be necessary to insure an adequate milk supply for the market. Should it develop at any time that a higher return to producers is required to achieve this end the matter of appropriate price level should be promptly considered at a public hearing. In this regard, on the basis of the reopened hearing held in Washington, D.C., on April 14–15, 1967, in conjunction with emergency hearings called to consider the Class I price level under Federal orders generally, the Class I price level was increased 20 cents effective May 1, 1967, and extending through April 1968.

The proponent cooperative contended that the proposal should be adopted on the more general grounds that it would solve many of the problems being considered at the hearing. The contentions, however, were based primarily on experience in the New York market with little consideration given to the actual effects of such provisions. On cross examination a representative of the cooperative admitted that they had not surveyed the markets involved to determine the need or the effects of adoption of their proposal on the local market. The request for such pricing is therefore denied.

One of the components of the economic index used in the computation of the Class I price under the New England orders is a New England dairy ration index. This is computed by dividing the monthly average price reported by the Department of Agriculture to have been paid by farmers in the New England region for 100 pounds of mixed dairy feed

containing less than 29 percent protein by the factor 0.04041, which factor reflects the average price for such feed as reported by the Department of Agriculture during the years 1957–59.

The Statistical Reporting Service of the Department of Agriculture has now determined that the prices reported in recent years have not appropriately reflected the actual price paid by farmers purchasing bulk (unbagged) feed in quantity lots which is now the customary practice. They have, effective June 29, 1966, revised the basis for reporting such price and in addition revised the prices previously reported for the period January 1954 through May 1966.

Under the revised price series the average price per hundredweight during the period 1957–59 was $3.884 as compared to a price of $4.041 previously reported. It is necessary that the order be amended to reflect this adjustment to provide comparability between the base period price and the price as currently reported. Unless this is done the New England dairy ration index would have an unwarranted depressing influence on the Class I price level. In this regard, official notice is taken of the action of the Assistant Secretary effective July 22, 1966. (Determination of Equivalent Factor To Be Used in Computation of Price for Class I Milk.) (31 F.R. 10414.)

Official notice is taken of the amendments effective April 1, 1967, for the Massachusetts-Rhode Island, Connecticut, and New York-New Jersey orders which removed the seasonal Class I pricing provisions and provided in lieu thereof a take-out-pay-back (Louisville) plan for paying producers. Previously in these markets the seasonal price adjustments contained in the Class I pricing formulas provided the highest level of price for the months of October, November, and December, normally the shortest months of supply. To insure that the intent of the seasonal price adjustments could not be negated during these months by a downward movement in any of the Class I pricing components the New England orders contained a contraseasonal price provision which provided that the Class I price in November and December, respectively, could not be lower than the price in the preceding month.

Since the orders no longer provide for seasonality of Class I pricing and because, as hereinafter proposed, the bracketing scheme providing for Class I price adjustments in 22-cent increments is being removed from the orders, month-to-month Class I price adjustments in response to changes in the economic index factors or the supply-demand adjustment will not be substantial. Accordingly, the contraseasonal provisions of the orders will no longer serve any substantial purpose and appropriately should be removed to permit free action of the pricing formula.

Price alignment between the New England orders and the New York-New Jersey order must be given careful consideration in any modification of the New England Class I price formulas.

At the present time the New England Class I price formula employs a snubbing provision to keep the economic index price (price prior to supply-demand adjustments and bracketing) aligned with the New York-New Jersey price prior to supply-demand adjustments. This snubber allows a maximum 5-cent variation in the prices at that point. However, the final prices can vary by considerably more than 5 cents. For example, the average 1966 Class I price (21st zone) for the New England orders exceeded the similar price for New York-New Jersey by 31 cents. As these price differences increase there is increasing incentive for milk to move from the lower priced New York-New Jersey market to the higher priced New England markets.

Official notice is taken of the monthly statistical reports of the market administrators for the two markets for the months of June 1966 through February 1967. During the 12 months ending with February 1967, over 31.5 million pounds of New York-New Jersey pool milk were disposed to pool plants associated with the Massachusetts-Rhode Island marketing area. The monthly amounts have followed a general upward trend during this period, starting at 1.2 million pounds in March 1966 and ranging up to 4.5 million pounds in February 1967. It is apparent that this continuing upward trend in receipts of New York-New Jersey pool milk in the New England Federal order markets is the direct result of the pricing advantage New England handlers gain through the use of such milk.

Part of the problem of price alignment stems from the use of the bracketing system in the New England orders. Under this system if prices are in close alignment prior to bracketing they can, after bracketing, be out of alignment by as much as 11 cents, depending upon where the unbracketed price falls within the bracket system. In addition, a small movement of the unbracketed price can cause a movement of 22 cents in the final price.

Removal of the bracketing system would reduce the sharp increases or decreases in the final price and reduce the tendency for price misalignment. Therefore, the bracket system should be removed from the orders.

To implement the 7-cent adjustment in differential pricing hereinafter concluded to be necessary, appropriate adjustments must be made in the pricing formula. If no adjustment is made in the basic price, the Class I price level at city plants and returns to producers delivering to such plants would be decreased 7 cents. On the other hand, if no change is to be made in returns to producers delivering to city plants, the basic price level and returns to producers delivering to country plants would necessarily have to be increased by 7 cents.

In light of the Assistant Secretary's decision increasing the Class I price level by 20 cents on the basis of evidence presented at the reopened hearing there can be no further basis on the record for any change which would significantly affect total producer returns. Ideally, the 7-cent adjustment in differential pricing should therefore be integrated into the pricing scheme in a manner which would not change total producer returns. Currently, almost 50 percent of producer milk in the Massachusetts-Rhode Island order is priced at city plants. Accordingly, a 4-cent upward adjustment in the basic price level in combination with the 7-cent adjustment in differential pricing will result in a 3-cent reduction in the nearby zone Class I price. Total producer returns for the market, however, will remain virtually unchanged. This is concluded to be the most appropriate means of integrating the 7-cent adjustment in differential pricing into the pricing structure.

It is recognized that this procedure will necessarily effect a 3-cent reduction in the Class I price applicable at city plants under the Connecticut order and that 90 percent of the producer milk under that order is priced at city plants. However, because of the close interrelationship of the Connecticut and Massachusetts-Rhode Island markets it is not possible to maintain a higher city plant price under the Connecticut order than is applicable at Massachusetts-Rhode Island city plants. The Connecticut market is only 40 percent the size of the Massachusetts-Rhode Island market and milk from the latter market is equally available to the Connecticut market. Accordingly, there simply is no practical means by which this slight reduction in price can be prevented.

In recognition of the 4-cent adjustment in the basic price level the snubber which currently holds the economic index price within 5 cents of the New York-New Jersey Class I price prior to supply-demand adjustments should be extended from the present 5 cents to 9 cents. Unless this adjustment is made producer returns would be decreased as a result of the adjustment in zone differentials since the economic index price has been above the permitted 5-cent variation from the New York-New Jersey price.

The supply-demand adjustment mechanism which is a component of the pricing formulas reflects the combined producer receipts and Class I sales of the two markets. Briefly, the experience for each of the second, third, and fourth preceding months, is compared with a base Class I percentage reflecting a 37-month market experience (determined annually at the beginning of each calendar year) adjusted by the weighted average utilization in the base year 1958. The result is expressed as a "percentage of base supply" and the economic index price is adjusted one percent for each 1.5 points deviation of the percentage of base supply from 100.

Without some adjustment in the supply-demand provision the current supply and sales data for plants being brought under regulation as a result of the decision could, unless the pattern is identical to the existing market, affect the supply-demand factor of the formula and further adjust the Class I price. Since information with respect to such plants will not be available for any month

prior to the effective date of the amending order; it is not possible at this time to reconstruct the supply-demand mechanism to accommodate the extended market.

The spokesman for the principal cooperative proponent for the area extension proposed that the effect of the supply-sales relationship change be minimized by compensation in the supply-demand adjustment mechanism. Under his proposal this would be accomplished by providing for statistical reporting for plants serving the area of extension 1 month prior to effective date of the full order. The supply-sales data for the two markets and the area of extension then would be used to calculate a current percentage of base supply identical with that resulting from the existing orders for such month by adjusting the "norm" (which reflects the average Class I utilization in the base year) to the extent necessary to accomplish this end. The "norm" thus computed would be used in all subsequent months in the computation of supply-demand adjustment.

The major problem with this suggestion is that the data for the trial month will not be available until after the month for statistical reporting is over and the Class I price for the next month is announced and in use. In addition, the compensating adjustment would have to be based on 1 month's experience which may or may not be representative. For example, if the seasonality of the production and/or sales differ from the seasonality used in adjusting the base percentages, the new "norm" would not be representative. Or, if the handlers make changes in their operations to include or exclude sales and/or production from the area after the expansion has taken place, the new "norm" would not be representative.

On the basis of this record there is no way to predict the adjustments that handlers may make in their operations after the area extension. Thus, the possible effect of the additional supplies and Class I sales associated with the area of extension on the supply-demand adjustor cannot be predicted. It is concluded therefore, that pending consideration of the matter at a subsequent hearing, when more adequate data are available, the supply-sales data of the plants brought under regulation as a result of the area expansion should not be reflected in the supply-demand adjustment.

The Deputy Administrator in his recommended decision concluded that the $6.35 Class I price (adjusted to $6.39 to reflect the 4-cent adjustment in the basic price level necessary to implement the 7-cent adjustment in zone differentials) could be assured when the Class I pricing formula was reactivated. This, however, would have required an extension of the snubber from 5 cents to 13 cents, a flooring of the economic index at 115.89 and a freezing of the supply-demand adjustment factor at 0.99.

It is hereby concluded that the most practical means of insuring a $6.39 Class I price level through April 1968 is through a stated price. As the Deputy Administrator pointed out, the principal cooperatives in the New York-New Jersey and New England markets have indicated their intent to review their respective pricing formulas with the expectation of an amendment hearing to provide a more integrated pricing scheme among these markets. It is therefore reasonable to assume that ample time is available prior to April 1968 when the fixed price expires to adopt appropriate order amendments to accomplish this end.

Exceptions were filed to the Deputy Administrator's decision to modify the Class I pricing formula by eliminating the bracketing scheme and the contra-seasonal pricing provisions. Under the fixed price herein proposed these modifications will have no effect on the Class I price through April 1968. Since exceptors will have opportunity at the contemplated Class I price alignment hearing to present evidence and arguments in support of reestablishing such provisions in the order, if they so desire, there is no need to deal with such exception here.

(b) *Class II prices.* No change should be made with respect to the Class II price level under the respective orders on the basis of the June 19–July 1, 1966 record.

Further consideration of the Class II price level will be given in a separate decision based on the evidence adduced at the June–August 1967 sessions of the hearing, which related solely to the matter of Class II prices.

All of the northeastern Federal orders price surplus (reserve) milk on the basis of the average price for milk for manufacturing purposes, f.o.b. plants United States as reported by the U.S. Department of Agriculture adjusted to a 3.5 percent butterfat content basis. The resulting price is then adjusted seasonally in specified amounts under each of the respective orders. These seasonal adjustments increase the Class II price level in the New England markets on an average annual basis by 5.4 cents.

Proposals were made to increase the Class II price level, (1) by 5 cents during July through November, (2) by 4.2 cents in each month but only in the nearby plant zones, and (3) on an increasing scale from zero in the 21st zone to 9.2 cents in the nearby zone.

In support of their proposals proponents contended that a higher Class II price level was needed to provide price alignment with the Class III price under the New York-New Jersey market as it applies with respect to farm bulk tank milk. In addition, proponents for a higher Class II price in the nearby zones contended that a higher price in these zones would tend to deter handlers from the continuing practice of associating Class II milk with plants in the nearby zone. They pointed out that this practice is fostered under the present orders since much of the transportation associated with such movement of milk is subsidized from pool proceeds. Finally, proponents for a higher Class II price in the July–November period only, also argued that such price increases would moderately increase the blend price during such period and hence encourage more even seasonal production without affecting the marketability of the milk.

The appropriate level of pricing for reserve milk and the need for interorder price alignment under the northeastern Federal orders was considered at a hearing held in New York City during the period June 19–30 and July 10–August 2, 1961. The present Class II pricing provisions of the New England orders were promulgated on the basis of testimony presented at that hearing. In this regard, official notice is taken of the findings and conclusions of the Under Secretary as set forth in his decision of April 25, 1962 (27 F.R. 4115).

The conclusions of the Under Secretary in this 1962 decision with respect to price alignment were not contested in the hearing now under consideration except to the extent that it was argued that the desired price alignment was not, in fact, achieved between the New England markets and the bulk tank milk priced as Class III under the New York-New Jersey order.

A similar argument was advanced in the exceptions to the 1962 recommended decision and was answered by the Under Secretary in the final decision in which he stated "* * * a similar situation exists within the terms of New York-New Jersey order. Some handlers currently purchase their milk for Class III use f.o.b. the plant, while others purchase such milk in bulk tanks and pay the haul from the farm. The level of Class III prices adopted herein is related to Class II prices in the other northeastern markets for location of plants since this is the customary basis for pricing milk in all the markets, and even in the New York-New Jersey market the major portion of supplies are so priced. Any cost adjustment which may be appropriate in the New York-New Jersey market relative to bulk tank milk received at the farm may be considered in terms of proposed changes to the bulk tank provisions of the order."

The situation in this regard is unchanged and the conclusions of the Under Secretary in denying exceptions are equally appropriate to the current situation. Hence the request for recognition in Class II pricing under the New England orders of the costs to handlers under the New York-New Jersey order of bulk farm tank milk for Class III use, is denied.

A primary concern of proponents of a higher Class II price level is the volume of producer milk received at plants in the nearby zones which is disposed of for Class II use, and on which the transportation from farm to plant is substantially subsidized from pool funds. This subsidization results from the fact that the location differential on Class II milk received directly at nearby plants is +5.8 cents whereas the blend price differential is +47 cents.

Under usual circumstances there is no reason why milk should be transported substantial distances for Class II use. Milk not needed for Class I use can most economically be disposed of to manufacturing plants in the production area. If handlers demand producer milk for

Class II uses at city plants they appropriately should pay the transportation cost involved to move such milk from the production area to their plants.

The situation in the New England markets is somewhat unusual, however, in that cooperative associations operate several manufacturing plants in the nearby zones. These plants were initially constructed to act as balancing plants for local markets when separate Federal regulation was provided in the Boston, Merrimack Valley, Springfield, and Worcester, Mass., markets. Under the combined order these plants continue to serve the combined market in essentially the same manner as under separate regulation. That is, milk which cannot be disposed of for Class I uses by the handlers who usually receive such milk is moved to these plants and principally is processed into nonfat dry milk and cream, the value of which is appropriately reflected in the present Class II price level.

It is not apparent from the record that cooperatives operating nearby manufacturing plants are seeking or have sought milk for manufacturing. Rather, such plants have functioned to promote orderly marketing by contributing to the orderly disposition of reserve milk in the market. A higher Class II price would probably place on the cooperatives operating such plants the additional burden of handling the reserve milk supply now manufactured by proprietary handlers since there is no evidence that milk disposed of for nonfat dry milk and cream could yield a higher return than the existing Class II price.

Under any circumstances, the proposed price adjustments considered at the hearing would do little to ameliorate the situation which proponents seek to correct. If proprietary handlers with city plants are demanding producer milk for specialized Class II uses, consideration might more appropriately be given to establishing a higher price for milk disposed of in such specified uses. The record of this hearing, however, provides no basis for such action. To the extent that handlers have associated milk with nearby plants and are diverting to country manufacturing plants, milk not needed for Class I use, the amendments adopted elsewhere in this decision which would price such milk at the plant of physical receipt, will eliminate any advantage which handlers have enjoyed through transportation savings on such milk.

7. *Zoning and zone differentials.* The Massachusetts-Rhode Island and Connecticut orders should be amended to provide that the Class I and blended prices applicable at nearby (city) plants shall be 40 cents per hundredweight above comparable prices for the 21st (201–210 miles) zone. The nearby plant zone under the Massachusetts-Rhode Island order (at which the plus 40-cent zone differential would apply) should encompass only the area within the States of Connecticut and Rhode Island and that part of Massachusetts which is within the farm location differential areas.

The zone differential schedule set forth in § 1001.62(d) should be revised to conform with the revision in the nearby plant zone and incorporate the receiving station allowance and fixed transportation costs into the rate schedule at the 15th (141–150 miles) zone.

Under the existing Massachusetts-Rhode Island order the nearby plant zone takes in the entire marketing area. It also includes the farm location differential areas which extend to a number of Vermont, New Hampshire, and Maine towns. Class I and blended prices within the nearby plant zone are at the city plant price; i.e., 47 cents above the announced 21st zone price. The receiving station allowance and fixed transportation costs are incorporated in the rate schedule at the nearby zone and the zone differentials from that point through the 21st zone vary at the rate of 1.2 cents per zone. Beyond the 21st zone the increment is at the rate of 1.0 cent per zone.

Prices under the Connecticut order are announced f.o.b. market and the nearby zone to which such prices are applicable extends to within 50 miles of Hartford. The receiving station allowance and fixed transportation charges are incorporated into the zone differential schedule at the 6th zone and the price for more distant zones is adjusted at the rate of 1.4 cents per zone.

Proposals were made to reduce the differential between zone 21 and the nearby plant zone from 47 cents to 40 cents in both orders. Also proposals, or modifications thereof, were made for the Massachusetts-Rhode Island order to establish more than one basing point for the purpose of applying location differentials; also to change the existing differentials between zones, the nearby plant zone definition, the point at which supply plant allowances are effective, and the point at which the variable transportation rate becomes effective. One proposal to modify the nearby plant zone definition in the Massachusetts-Rhode Island order to include all plants located within the 46-cent farm location differential area was conditioned upon the addition of Cheshire and Sullivan Counties to the marketing area. Since the inclusion of these counties is not being proposed, this proposal is not here considered.

The present zone differentials under the Massachusetts-Rhode Island order have been effective since October 1, 1964. The differential of 47 cents between the 21st zone and nearby zone price reflects a fixed transportation cost of 13 cents regardless of distance plus variable transportation costs of 1.2 cents per 10 miles distance; and plus additional costs of handling milk through country plants, as compared to direct receipt at the city, of 10 cents.

At the hearing both producer and handler interests concurred that the differential between city plant and country plant pricing was excessive in terms of present transportation and country plant operating costs. Since the application of zone differentials is intended to achieve a high degree of uniformity in prices to all handlers f.o.b. the market, it is necessary that such differentials reflect insofar as possible only the additional costs incurred in receiving milk first at country plants and moving it to the central market.

Handler and cooperative representatives both testified that with the essentially complete transition from can to farm bulk tank handling, the additional cost of receiving milk through country plants has been significantly reduced. The principal handler spokesman, whose company operates a number of country plants, testified that their actual costs in operating country plants were about 4.5 cents per hundredweight of milk as compared to the current allowance of 10 cents included in the present differentials. A reduction in the cost of operating country plants was further attested to by a representative of a cooperative association who stated that the average additional cost of operating eight of their receiving stations was 6 cents per hundredweight.

Information was placed on the record on actual transportation charges by independent haulers for over 186 million pounds of milk moved from 29 country plants to plants within 40 miles of Boston during the period July through November 1965. The weighted average cost varied from 24.53 cents for milk originating at plants in the 15th zone to 35.53 cents for milk originating at plants in the 25th zone. While there are some unusual variations in hauling costs as between zones of origin (for example, the charge from the 25th zone only slightly exceeded that from the 21st zone) the data generally substantiate a transportation cost of 34 cents from the 21st zone with an average 1.2-cent increment in cost from one zone to the next. Thus it must be concluded that the present 47-cent differential between the 21st zone and the central market appropriately should be reduced to 40 cents.

The 7-cent reduction reflects a 4-cent reduction in country plant costs from 10 cents to 6 cents and a 3-cent reduction in transportation costs. Since the evidence on hauling rates substantiates retention of the current variable rate of 1.2 cents per 10-mile zone, the 3-cent reduction in transportation costs must be associated with the fixed costs of transportation.

Under the present order the country plant charges and fixed transportation costs are added at the nearby zone. This scheme of applying location differentials has accommodated the past market structure since essentially all of the regulated distributing plants were located south of the Massachusetts-New Hampshire line, while the supply plants were generally located beyond the 14th zone. However, the extension of regulation into southern New Hampshire requires reappraisal of the point at which fixed transportation and country plant charges should be introduced into the schedule of differentials.

Various proposals were made relative to the construction of a location differential schedule reflecting a seven-cent reduction in differential pricing between the 21st zone and the central market. Proponents generally recognized that extension of regulation to southern New Hampshire presented a delicate pricing problem. If the presently defined nearby zone was left unchanged and the present scheme of applying location differentials was retained, essentially all of the New Hampshire handlers being brought under regulation would be required to account to the pool for their milk and pay their producers at the identical prices required of Boston based handlers. Because their plants are much closer to the primary milk supply of the market, however, there would be opportunity for these New Hampshire handlers to undercut the order prices by charging excessive transportation in moving milk directly from farms to plants.

Handlers would be under considerable pressure to cut order prices in this manner since their alternative supply source would be upcountry supply plants and to the extent that the established differentials might exceed transportation and plant costs associated with procurement of country plant milk, the incentive would exist to drop producers in favor of supply plant milk. Producers, on the other hand, would be under strong pressure to accept excessive hauling charges in order to hold their local market as long as they received net returns at least equivalent to that which they would get if their milk were delivered to Boston. As a result, New Hampshire handlers would be able to obtain their milk at prices below the established order prices.

To insure appropriate pricing as between pool distributing plants located south of the Massachusetts-New Hampshire line and distributing plants north of this line which will become regulated as a result of the area extension hereinbefore proposed, the nearby plant zone should be reduced to encompass only the States of Connecticut and Rhode Island and the territory within the farm location differential areas within the State of Massachusetts.

This adjustment alone, however, will not fully accommodate the market structure under the expanded area. If the country plant and fixed transportation costs are incorporated into the zone differential schedule at the nearby zone, as at present, local New Hampshire handlers would be forced to rely on country plants for a milk supply since southern New Hampshire producers would receive higher returns shipping to plants in the nearby zone than they could obtain shipping to local New Hampshire dealers.

To avoid such a result the country plant and fixed transportation cost appropriately should be incorporated in the zone differential schedule at some point outside the area of local pool distributing plants but where they will be applicable for all country supply plants. This may be accomplished by adding such costs into the differential schedule so as to be applicable to plants located in the 15th zone and beyond.

Under this procedure all plants located south of the Massachusetts-New Hampshire line and within the farm location differential zones will have identical pricing. Plants located outside of this area but within 31 to 40 miles (4th zone) of Boston will have a location differential of 3.6 cents. For each successive 10-mile zone through the 14th zone the differential will increase 1.2 cents. At the 15th zone the revised country plant and fixed transportation costs of 6 cents and 10 cents, respectively, should be added making the total differential between the 14th and 15th zones 17.2 cents. The zone increments beyond the 15th zone should remain as at present; i.e., 1.2 cents through the 21st zone and 1 cent beyond. The total Class I price and blended price differential between the 21st and nearby zone would be 40 cents rather than 47 cents as at present.

This revision in the zone differential schedule will achieve a high degree of uniformity in prices to all handlers and appropriately reflect the costs of moving milk through supply plants to distributing plants throughout the market. Accordingly, producers and handlers, respectively, will be free to choose their market and source of supply without substantial influence from the variations in zone prices under the order.

Producers under the Connecticut order opposed any change in the zone differential structure. They argued that the continuing increase in the proportion of milk which is received directly at city plants under the Massachusetts-Rhode Island order supports an increase in the location differential, rather than a decrease. It was their position that excessive location differentials would cause handlers to make economic decisions to retain country plant operations. Since the opposite of this has resulted they contended that the present differentials must be considered inadequate.

These arguments fail to recognize that producers generally have a choice of markets. To the extent that city markets are available and provide greater net returns, producers can be expected to seek out such markets. Country plant operators, therefore, have a problem in holding producers unless they pay prices which result in equivalent returns to producers. With the flexibility in milk handling which resulted from the transition to farm bulk tanks, producer milk can be readily moved directly to the market when the producers receive a price advantage. For this reason there has been a continuing trend toward direct receipt at city plants.

In order to retain the interorder price alignment which has been found necessary in the past, the zone differential schedule in the Connecticut order must also be revised to reflect a 7-cent reduction in differential pricing as between the city and the 21st zone. This can be accomplished by reducing the differential for each zone beyond the nearby plant zone by 7 cents. This will result in a 19-cent differential for the 6th zone with an additional 1.4 cents being added for each successive zone beyond.

In order to accommodate to the change in the nearby plant zone in the Massachusetts-Rhode Island order which now will encompass zones 1 through 3 rather than 1 through 8, it is desirable that the Class II zone differential table be extended to include a variable rate for zones 4 through 8. No specific evidence was introduced in this regard but there was general testimony stating that the increment in zone differentials should reflect the variation in transportation costs.

Official notice is taken of the zone differential schedule set forth in § 904.7(c) of the Greater Boston order effective May 1, 1949, and of all subsequent amendments thereto. The nearby zone at that time included the area within 40 miles of Boston as compared to the area herein recommended of within 30 miles. The differentials for zones 9 through 40 were identical to those contained in the current order and it is therefore concluded that the differentials therein set forth for zones 5 through 8 may be adopted as appropriate differentials in the revised zone differential schedule. This leaves only the problem of an appropriate differential for zone 4. In this regard it is noted for zones 5 through 10 the differentials vary alternately by two-tenths and three-tenths of a cent. It is concluded therefore, continuing this sequence, that the differential for the 5th zone should exceed that of the 4th zone by three-tenths of a cent. This results in a 4.5-cent differential for the 4th zone.

9. *Payments to producers and cooperative associations.* The Massachusetts-Rhode Island order should be amended to provide that handlers shall pay a cooperative, in its capacity as a handler pursuant to § 1001.9(d) at the same time and at not less than the rate such handlers are required to pay producers. For milk received from the pool plants of cooperative associations, handlers should be required to make timely payments at not less than the applicable class prices. The proposal to increase the rate of advance partial payment to producers to 50 cents below the administrator's announced estimated blend price should be denied.

The Connecticut order should be amended to provide that producer-handlers shall pay for milk received from a cooperative association, in its capacity as the operator of a pool plant, at the same time and at not less than the rate other handlers are required to pay such an association for milk so received.

The present producer-handler definition specifically exempts them from the payment provisions of the order. Accordingly, the conclusions herein expressed are implemented by removing the applicable section references from the producer-handler definition.

Proposals were made by the New England Milk Dealers Association, Inc., and by a cooperative association that would require handlers under the Massachusetts-Rhode Island order to pay cooperative associations in the same manner

as they are required to pay individual producers. The cooperative association also proposed that the advance partial payment to producers or cooperative associations for milk received from them during the first 15 days of the month be at a rate not less than 50 cents below the market administrator's announced estimated blend price.

When cooperative associations act as handlers and assume the responsibility for the producer's milk at the farm as is recommended under specified circumstances elsewhere in this decision they also assume a unique role under the order. That is, they are responsible for payments to producers for milk received from them during the month even though they do not operate a plant. The producers, of course, expect to receive payment within the dates specified in the order, but presently the associations have no means other than bargaining power to collect the money owed for this milk by those dates from the handler who actually used it. As a result, when circumstances prevail that weaken its bargaining position the cooperative association can be put in the position of involuntarily financing a handler's purchases through its producer-members. In such a situation the very purpose of the order of assuring proper and timely payments to producers is defeated and disorderly marketing could result.

It is possible that certain arrangements may be made between the handler and the cooperative which might circumvent the provision proposed to be adopted, and yet be legal. However, such a provision would still be an aid to effective administration in that any arrangement made between the cooperative and the handler for payment at less than the appropriate order prices or in some unusual manner or at dates later than those specified in the order would have to be in the open, and have been agreed to by both parties. Under the present arrangement there need be no formal agreement but only the unilateral action by the handler in failing to make proper payment on time. It is concluded that adoption of the proposal requiring timely payment by handlers at not less than order prices will promote orderly marketing and will provide for more effective order administration.

At the present time handlers are required to pay each producer on or before the 5th day after the end of each month for the approximate value of milk received from him during the first 15 days of the month. This payment may not be at less than the applicable zone Class II price for the month.

A producer receiving only the Class II price as a partial payment is in fact extending to the handler a certain amount of credit until the final payment is made by the handler, which is not required until the 20th day of the month following the month in which the milk is delivered. The amount of credit in such cases is equal to the difference between the advance payment and the applicable blend price. Under normal circumstances the amount of credit extended is relatively small and probably unavoidable since the actual blend prices are not available by the fifth of the month following delivery.

The record evidence does not reveal any substantial problems resulting from the current level of partial payments. Moreover, the lack of widespread support by producer representatives of this proposal indicates that there is no great need for specifying higher required rates of partial payments at this time. Therefore, the proposal is denied.

A proposal was made by local Connecticut cooperatives which would require producer-handlers to pay for milk received from a cooperative association, in its capacity as the operator of a pool plant, at the same time and rate as is required of other handlers. At the hearing a representative of the Connecticut Milk Producer Dealers Association testified that his association was agreeable to such a proposal.

Presently handlers and buyer-handlers under the Connecticut order are required to make payments for milk received from a cooperative association, in its capacity as the operator of a pool plant, by specified dates and at the applicable class prices adjusted by the zone price and butterfat differentials while producer-handlers are exempt from such requirements. In the interest of assuring orderly marketing through the equitable treatment of handlers and assurance of payments for producers' milk supplies from a cooperative's pool plant, producer-handlers should be required to make the same payments and by the same dates as other handlers are required to pay in similar circumstances.

10. *Miscellaneous and administrative provisions—Reclassification of ending inventory.* The Massachusetts-Rhode Island order should be amended to provide that the reclassification charge on fluid milk products included in a plant's ending inventories which were classified and priced as Class II milk in the previous month but which are reclassified as Class I in the current month shall be computed at the zone prices for the same zone location as would have been used had such milk been originally classified and priced as Class I.

When ending inventory is classified as Class II and subsequently reclassified as Class I a charge at the difference between the previous month's Class II price and the current month's Class I price is made on the amount of opening inventory which is assigned to Class I in the current month. This procedure is designed to assure equal product cost among handlers for milk disposed of in Class I.

At the present time the order provides that the prices used in computing the pool payment on beginning inventory that has been reclassified as Class I shall be the prices for the zone location of the plant for which the value is being computed. Under this provision when milk received at a nearby plant from a country plant is held in inventory as Class II and is reclassified as Class I milk in the current month, the value attached to such reclassified milk is higher than would have been attached to it had the plant involved claimed all the preceding month's ending inventory as Class I, or if only one plant were involved.

Under the order the operator of the shipping plant is held responsible for the milk at the price applicable at its zone location. While the operator of the receiving plant has no pool obligation on the milk, he must, of necessity, incur the cost of moving the milk to his plant. However, when part of this milk so shipped is included as ending inventory at the transferee plant and classified as Class II, but is subsequently assigned to Class I milk in the current month, the order requires a reclassification charge which provides the same total Class I obligation on such milk as though it had been initially received from producers directly at the transferee plant. In other words, the milk is normally priced at the location of the shipping plant when originally classified as Class I or Class II, but, when it is reclassified as Class I milk as part of the current month's beginning inventory it is priced at the location of the receiving plant. Therefore, the receiving handler is responsible to the pool for such reclassified milk at the same rate as would have been applicable had the milk been delivered directly by producers to his plant. In such case the handler incurs an added cost for which he receives no return. The result of this is to create unequal costs to handlers for this volume of reclassified inventory milk, depending upon the manner in which different handlers treat their ending inventories.

In order to avoid any unequal pricing to handlers on inventory milk that is reclassified and priced as Class I and to provide that the producers, through the pool, do not receive additional money through inequitable pricing of such milk, the point of pricing for opening inventory milk reclassified as Class I should be changed to the point at which such milk would have been priced as Class I milk in the preceding month.

Statements to producers. The Massachusetts-Rhode Island order should be amended to make clear that the butterfat differential value is part of the required information to be shown by handlers on their statements to producers.

In making required payments to producers, handlers currently are required to furnish each producer with a supporting statement which must show, among other things, the minimum rate or rates at which payment to the producer is required by the order. It is desirable that the producer have this information readily available to him in order that he be able to check his payment for accuracy as well as to make valid price comparisons with other potential outlets for his milk. The butterfat differential by which the rate of payment is adjusted to the butterfat content of the producer's milk is a necessary part of these computations and should be shown on his supporting statement.

Monthly reports of receipts and utilization. The Massachusetts-Rhode Island order should be amended to provide that

the handlers' monthly reports of receipts and utilization be filed on or before the 8th day after the end of the month or not later than the 10th day if the report is delivered in person to the office of the market administrator. In conjunction with this change the order should also be amended to allow the market administrator until the 13th day of each month to announce the zone blended prices.

Currently the order provides that all such reports must be filed on or before the 8th day after the end of the month, without any special provision for reports delivered in person. It also provides that the market administrator shall announce the zone blended prices by the 12th day of each month.

Proponent of the proposal to allow personal delivery of the report by the 10th contended that its adoption was necessary to allow handlers with large operations sufficient time to prepare these reports when weekends and holidays intervened. He also proposed that the market administrator be allowed until the 14th day of each month to announce the zone blended prices. This was to allow for the later date of receipt of some reports as a result of the change to the 10th day for personally delivered reports.

For handlers with substantial operations the deadline of the eighth as now set does require extensive extra work when holidays or weekends fall toward the end of this 8-day period. It is possible to decrease this burden without adversely affecting the interest of producers or handlers generally by extension of the deadline for hand delivered reports to the 10th day.

Major opposition to the change came from one handler who contended that such a change resulting in a blend price announcement on the 14th, would not allow him sufficient time to prepare his producer payroll and make producer payments by the required date. In this regard, the market administrator stated that since mailed reports were many times not received before the ninth, setting the final date as the 10th for personally delivered reports would require only 1 additional day for him to make the necessary pool computations. Therefore, allowing him until the 13th to announce the zone blended prices would provide adequate time.

It is concluded that provision should be made for personal delivery of the handler's report on or before the 10th day after the end of the month and for announcement of zone blended prices by the market administrator by the 13th day of each month.

Reports of dumping. The Connecticut order should be amended to allow the exclusion of Sundays and legal holidays applicable at the location of the reporting plant from the time limit for the filing of reports pertaining to dumping not witnessed by the market administrator. Also, the 48-hour limit now in the order should be changed to the more general term of 2 days.

The Connecticut Milk Dealers Association asked that the exclusion of Sundays and legal holidays be allowed on the grounds that getting the report prepared and signed on these normally nonworking days was nearly impossible within the 48-hour limit and it therefore created a hardship on affected handlers. In discussion of this proposal it was also determined that making the exclusion of legal holidays applicable at the plant location would avoid any confusion on what holidays were excluded since the plants could be located in different States. It was also determined that changing the 48-hour limit to the more general term of 2 days would be a more reasonable time limit to meet.

No opposition was voiced with respect to these proposals and since they would reduce the problems encountered by affected parties without reducing the effectiveness of the order they should be adopted.

Marketing service. No change should be made in the marketing service provision of the Connecticut order.

Currently, the order requires that the market administrator provide certain marketing services for producers, such as verifying the weights and tests of producer milk and dissemination of market information. The cost of these services is borne by the producers. Where a cooperative association is determined by the Secretary to be performing these services for its member producers, such producers are not subject to the marketing service deduction.

A proposal was made to exempt from the marketing service deduction a producer who is not a member of a cooperative association but who during the past 12-month period had total milk production in excess of 5 million pounds, is currently producing at that rate, and delivers all of his production to one handler. It was proponent's contention that a producer meeting these standards normally provides such services on his own and that the marketing service program is merely a duplication of the producer's own services.

A marketing service program cannot be efficiently operated and maintained if the scope of the service is made subject to the consent or withdrawal on the direction of each nonmember producer involved. Nor would such a condition contribute to the fulfillment of the statutory requirement of uniformity in price to regulated handlers if the important functions of accurate butterfat testing and verification of weights were, in effect, left to the choice, by negotiation or otherwise, of either the producer or the handler. Such a provision, when included in an order, must be such as will accomplish the full range of objectives both as to producers (members and nonmembers alike) and as to the maintenance of uniform minimum prices among handlers. Therefore, the proposal is denied.

Miscellaneous and conforming changes. Proposals to delete the obsolete transition language currently contained in the Massachusetts-Rhode Island order should be adopted.

At the time of the merger of the four New England markets in 1964 certain language was contained in the resulting Massachusetts-Rhode Island order to provide an orderly transition from the individual orders to the single order. Such language has now served its purpose and is no longer affecting any of the order operations, therefore, it should be removed.

Other changes in the orders which are not specifically discussed are conforming changes necessary to implement the conclusions previously set forth herein.

Order language changes from that set forth in the recommended decision, and not heretofore specifically discussed, are typographical corrections or clarifying changes necessary to insure full implementation of the conclusions set forth herein.

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 orders 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 agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, 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 agreement and order. Annexed hereto and made a part hereof are four documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Massachusetts-Rhode Island-New Hampshire Marketing Area", "Order Amending the Order Regulating the Handling of Milk in the Massachusetts-Rhode Island-New Hampshire Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the Connecticut Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Connecticut 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 order as hereby proposed to be amended by the attached order 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 to determine whether the issuance of the attached order regulating the handling of milk in the Massachusetts-Rhode Island-New Hampshire marketing area, is approved or favored by the producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of July 1967 is hereby determined to be the representative period for the conduct of such referendum.

R. D. Aplin, is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (7 CFR 900.300 et seq.), except that, notwithstanding the requirements of § 900.305(c)(3) (i) and (iii) of the aforesaid regulations, producer affiliation with cooperative associations will be determined as of the representative period. Such referendum is to be completed on or before the 30th day from the date this decision is issued.

Determination of representative period. The month of July 1967 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Connecticut marketing area, is approved or favored by producers as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on: October 13, 1967.

RODNEY E. LEONARD,
Deputy Assistant Secretary.

Order[1] *Amending the Order Regulating the Handling of Milk in the Massachusetts-Rhode Island-New Hampshire Marketing Area*

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AUTHORITY: The provisions of this Part 1001 issued under secs. 1-19, 48 Stat. 31 as amended, 7 U.S.C. 601-674.

§ 1001.0 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

[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.

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 Massachusetts-Rhode Island-New Hampshire 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.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, 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 expenses 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:

(i) All of the handler's receipts at pool plants during the month of fluid milk products from all sources, except receipts from pool plants, receipts from regulated plants under other Federal orders if such receipts were subject to an administration expense assessment under the other order, and receipts of exempt milk processed at plants other than pool plants;

(ii) All receipts and beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d) for the month less its disposition to pool plants and ending inventory for the month; and

(iii) The quantity of pool milk distributed as route disposition in the marketing area from a handler's nonpool plant.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof. the Massachusetts-Rhode Island order (Part 1001) shall be known as the Massachusetts-Rhode Island-New Hampshire order and the handling of milk in the Massachusetts-Rhode Island-New Hampshire marketing area shall be in conformity to and in compliance with the terms and conditions of Order No. 1, as amended and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on June 27, 1967, and published in the FEDERAL REGISTER on July 6, 1967 (32 F.R. 9902; F.R. Doc. 67-7467) shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following revisions:

1. Sections 1001.7, 1001.19, and the introductory paragraph of § 1001.27 are revised.

2. In § 1001.37(b), the introductory paragraph is revised and a new subparagraph (4) is added.

3. In § 1001.40(a), subparagraph (4) is redesignated subparagraph (5) and a new subparagraph (4) is added.

4. Sections 1001.56(a), 1001.60, 1001.65 (b) and (c) are revised.

5. In § 1001.70, the provisions under suspension are noted and a new paragraph is added.

6. In § 1001.72, the provisions under suspension in paragraph (a) are noted and the town of Arundel is deleted from paragraph (b).

7. Section 1001.76(d) is revised.

8. In § 1001.81(a)(2) the provisions under suspension are noted.

GENERAL DEFINITIONS

§ 1001.1 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.).

§ 1001.2 Massachusetts-Rhode Island-New Hampshire marketing area.

"Massachusetts-Rhode Island-New Hampshire marketing area," referred to in this part as the "marketing area," means all territory within the places listed below, all waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by any governmental installation, institution, or other establishment:

MASSACHUSETTS

COUNTIES

Barnstable.	Norfolk.
Bristol.	Plymouth.
Dukes.	Suffolk.
Essex.	

CITIES AND TOWNS

Agawam.	Dudley.
Arlington.	Easthampton.
Ashland.	East Longmeadow.
Auburn.	Everett.
Ayer.	Fitchburg.
Bedford.	Framingham.
Belmont.	Gardner.
Billerica.	Grafton.
Blackstone.	Holden.
Boylston.	Holliston.
Burlington.	Holyoke.
Cambridge.	Hopedale.
Charlton.	Hopkinton.
Chelmsford.	Lancaster.
Chicopee.	Leicester.
Clinton.	Leominster.
Dracut.	Lexington.

MASSACHUSETTS—Continued

CITIES AND TOWNS—Continued

Littleton.	Southbridge.
Longmeadow.	South Hadley.
Lowell.	Spencer.
Ludlow.	Springfield.
Lunenburg.	Sterling.
Malden.	Stoneham.
Marlborough.	Sutton.
Medford.	Tewksbury.
Melrose.	Tyngsborough.
Mendon.	Upton.
Milford.	Wakefield.
Millbury.	Waltham.
Millville.	Watertown.
Natick.	Wayland.
Newton.	Webster.
Northampton.	Westborough.
Northborough.	West Boylston.
North Reading.	Westfield.
Oxford.	Westford.
Paxton.	Westminster.
Princeton.	Weston.
Reading.	West Springfield.
Rutland.	Wilbraham.
Sherborn.	Wilmington.
Shrewsbury.	Winchester.
Somerville.	Woburn.
Southborough.	Worcester.

NEW HAMPSHIRE

COUNTIES

Belknap.	Rockingham.
Hillsboro.	Strafford.
Merrimack.	

CITIES AND TOWNS

Ashland.	Keene.
Bridgewater.	Marlborough.
Bristol.	Nelson.
Dublin.	Plymouth.
Harrisville.	Roxbury.
Holderness.	Sullivan.
Jaffrey.	

RHODE ISLAND

All cities and towns except New Shoreham (Block Island).

§ 1001.3 Route disposition.

"Route disposition" means distribution of Class I milk by a handler to retail or wholesale outlets, which include vending machines but do not include plants or distribution points. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

DEFINITIONS OF PERSONS

§ 1001.5 Person.

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

§ 1001.6 Secretary.

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

§ 1001.7 Producer.

"Producer" means a dairy farmer who produces milk which is moved, other than in packaged form, from his farm to a pool plant, or to any other plant as diverted milk. Notwithstanding what his status otherwise would be under any other Federal order, the term shall include a dairy farmer with respect to all milk caused to be moved from his farm

to a pool plant under this order by a handler under another Federal order if any of the dairy farmer's milk so received is assigned to Class I milk under this order. However, the term shall not include:

(a) A producer-handler under any Federal order;

(b) A dairy farmer with respect to milk caused to be moved from his farm to a pool plant under this order by a handler under another Federal order if all of the dairy farmer's milk so received is assigned to Class II milk under this order and considered as a receipt from a producer under the provisions of the other Federal order notwithstanding what his status otherwise would be under this order;

(c) A dairy farmer for other markets;

(d) A dairy farmer who is a local or state government and has nonproducer status for the month under § 1001.26(c);

(e) A dairy farmer with respect to salvage product assigned under § 1001.55 (e); or

(f) A dairy farmer with respect to milk which a handler causes to be moved from the dairy farmer's farm to a regulated plant under another Federal order, if any of the milk is assigned to Class I milk under that order and all of the dairy farmer's milk so moved is considered as producer milk under the other order.

§ 1001.8 Cooperative association.

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

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

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales of, or marketing, milk or its products for its members.

§ 1001.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any person who operates any other plant, or a pool bulk tank unit as defined under another Federal order, from which fluid milk products are disposed of, directly or indirectly, in the marketing area;

(c) Any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets packaged fluid milk products received from any plant described in paragraph (a) or (b) of this section; or

(d) Any cooperative association with respect to the milk which is moved from farms of its members in tank trucks operated by or under contract to the association, and which is moved to pool plants, or as diverted milk to nonpool plants other than producer-handlers' plants, for the account of and at the direction of the association. The association shall be considered as the handler who received the milk from the dairy farmers. However, the cooperative association shall not be the handler with respect to the milk moved from any farm if the association and the operator of the pool plant to which milk from such farm is moved both submit a request in writing, on or before the due date for filing the monthly reports of receipts and utilization, that the operator of the pool plant be considered as the handler who received the milk from the dairy farmer, and the pool plant operator's request states that he is purchasing the milk from such farm on the basis of the farm bulk tank measurement readings and of the butterfat tests of samples of the milk taken from the farm bulk tank.

§ 1001.10 Producer-handler.

"Producer-handler" means any person who, during the month, is both a dairy farmer and a handler and who meets the conditions specified in each of the paragraphs of this section.

(a) He provides as his own enterprise and at his own risk the maintenance, care, and management of the dairy herd and other resources and facilities which he uses to produce milk, to process and package such milk at his own plant, and to distribute it as route disposition.

(b) His own route disposition constitutes the majority of the route disposition from his plant.

(c) The quantity of route disposition in the marketing area from his plant is greater than in any other Federal marketing area.

(d) He receives no fluid milk products except from his own production and pool plants under any New England Federal order. If his receipts from own production and the total route disposition from his plant each exceed 2,150 pounds per day for the month, his receipts from New England Federal order pool plants are not in excess of 2 percent of his receipts from own production. For the purposes of this paragraph, his receipts of fluid milk products shall include receipts from plants of other persons at all retail and wholesale outlets which are located in New England Federal marketing areas and which are operated by him, an affiliate, or any person who controls or is controlled by him.

§ 1001.11 Dairy farmer for other markets.

"Dairy farmer for other markets" means any dairy farmer described in this section. For the purposes of this section, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by the handler or dealer. Receipts from a "dairy farmer for other markets" shall be considered as receipts from the unregulated plant at which the greatest quantity of his milk was received in the most recent month.

(a) The term includes a dairy farmer with respect to milk which is purchased from him during the month by a dealer who operates a plant but does not operate a pool plant, if the milk is moved to a pool plant directly from the dairy farmer's farm. The term shall not apply to the dairy farmer, however, if all the nonpool milk purchased from him during the month by the same dealer is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this part.

(b) The term includes a dairy farmer with respect to milk which is purchased from him by a handler and moved to a pool plant or which is purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d), if that handler caused milk from the same farm to be moved as nonpool milk to any plant during the same month. The term shall not apply to the dairy farmer, however, if all the nonpool milk is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this part.

(c) The term includes a dairy farmer with respect to milk which is received from him by a handler at a pool plant or which is purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d) during any of the months of December through June, if the handler caused nonpool milk from the same farm to be received during any of the preceding months of July through November at a plant which is not a pool plant under any Federal order in the current month. The term shall not apply to the dairy farmer, however, if all the nonpool milk was a receipt of producer milk under the provisions of another Federal order or represented receipts from own production by a producer-handler under any Federal order.

DEFINITIONS OF PLANTS

§ 1001.15 Plant.

"Plant" means the land and buildings, together with their surroundings, facilities, and equipment, constituting a single operating unit or establishment which is operated exclusively by one or more persons engaged in the business of handling fluid milk products for resale or manufacture into milk products, and which is used for the handling or processing of milk or milk products. The term "plant" does not include:

(a) Distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants); or

(b) Bulk reload points (separate premises used for the transfer of milk en route from dairy farmers' farms to a plant, at which premises facilities for washing and sanitizing cans or tank trucks are not maintained and used).

§ 1001.16 Pool plant.

"Pool plant" means any plant which meets the applicable conditions for pool plant status as a pool distributing plant, under § 1001.35; a cooperative association plant located in the marketing area, under § 1001.36; or a pool supply plant, under § 1001.37. However, if the market administrator determines that a specified proportion or quantity of the receipts from dairy farmers and of pool

milk from other sources handled at a plant is not available for Class I use because there is in force an unconditional contract for the plant to supply fluid milk products for Class II use, the plant shall not be a pool plant for the month in which the market administrator notifies the handler of the determination and for any subsequent month in which the contract is in force for any part of the month.

§ 1001.17 Exempt distributing plant.

"Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order, which meets all the requirements for status as a pool distributing plant except that its route disposition in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

§ 1001.18 Distributing plant for unregulated markets.

"Distributing plant for unregulated markets" means a processing and packaging plant from which the route disposition outside any Federal marketing area amounts to more than 50 percent of its total receipts of fluid milk products during the month. The term shall not apply to a pool plant, an exempt distributing plant under any New England Federal order, a producer-handler's plant under any Federal order, or a regulated plant under another Federal order.

§ 1001.19 Regulated plant under another Federal order.

"Regulated plant under another Federal order" means a pool plant or any other plant at which all fluid milk products handled become subject to the classification and pricing provisions of another Federal order.

DEFINITIONS OF MILK AND MILK PRODUCTS

§ 1001.22 Fluid milk products.

"Fluid milk products" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, buttermilk, concentrated milk, any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 16 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, and evaporated or condensed milk or skimmed milk, in either plain or sweetened form. Fluid milk products which have been placed in containers for disposition to retail or wholesale outlets are referred to in this part as packaged fluid milk products.

§ 1001.23 Cream.

"Cream" means that portion of milk, containing not less than 16 percent butterfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force. The term also includes soured cream, frozen cream, fortified cream, reconstituted cream, any mixture of milk or skimmed milk and cream containing 16 percent or more of butterfat, and 50 percent of the quantity by weight of any mixture of milk or skimmed milk and cream containing at least 10 percent but less than 16 percent butterfat.

§ 1001.24 Producer milk.

"Producer milk" means milk which the handler has received from producers. The quantity of milk received by a handler from producers shall include any milk of a producer which was not received at any plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month. Such milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month, except that in the case of a cooperative association in its capacity as a handler under § 1001.9(d), the milk shall be considered as having been received at a plant in the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of the milk of the cooperative association in such capacity was moved during the current month or the most recent month.

§ 1001.25 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section:

(a) Receipts of producer milk;

(b) The following receipts of fluid milk products at pool plants (exclusive of receipts from other pool plants, producer-handlers under any Federal order, exempt distributing plants under any New England Federal order, and receipts from regulated plants under other Federal orders which are classified and priced under the other orders):

(1) Receipts at pool distributing plants from plants located outside the New England States and beyond zone 40;

(2) Receipts at pool plants, other than pool distributing plants, to the extent assigned to Class I milk under § 1001.55 (g), from plants located outside the New England States and beyond zone 40; and

(3) Receipts at pool plants, to the extent assigned to Class I milk under § 1001.55(h), from plants located within one of the New England States or in zone 40 or a nearer zone, exclusive of bulk fluid milk products from distributing plants for unregulated markets;

(c) Receipts of bulk fluid milk products at pool distributing plants, to the extent assigned to classes under § 1001.56 (b), from regulated plants under other Federal orders with individual-handler pools;

(d) Receipts of bulk fluid milk products at pool plants, other than pool distributing plants, to the extent assigned to Class I milk under § 1001.57(g), from regulated plants under other Federal orders with individual-handler pools;

(e) Route disposition in the marketing area from any processing and packaging plant (except a pool plant, a producer-handler's plant under any Federal order, an exempt distributing plant under any New England Federal order, or a regulated plant under another Federal order) to the extent of all such disposition in the month which is in excess of a daily average of 300 quarts or of 700 quarts on any day, whichever is greater. In determining the quantity of pool milk under this paragraph, the total quantity of route disposition in the marketing area from the plant first shall be reduced by the quantity of fluid milk products received at the plant during the month which is classified and priced as Class I milk or the equivalent thereof under any marketwide pool Federal order and which is not used to offset route disposition in any other Federal marketing area. The reduction shall be made first in any route disposition which is in excess of 700 quarts on any day; and

(f) Route disposition in the marketing area from a regulated plant under another Federal order of fluid milk products which are not both classified and priced under the other order, to the extent of all such disposition in the month which is in excess of 700 quarts on any day or of a daily average of 300 quarts, whichever is greater.

§ 1001.26 Exempt milk.

"Exempt milk" means:

(a) Milk received at a pool plant in bulk from a nonpool plant to be processed and packaged, for which an equivalent quantity of packaged fluid milk products is returned to the operator of the nonpool plant during the same month, if the receipts of bulk milk and return of packaged fluid milk products occur during an interval in which the facilities of the nonpool plant at which the milk is usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the dealer's control;

(b) Packaged fluid milk products received at a pool plant from a nonpool plant in return for an equivalent quantity of bulk milk moved from a pool plant for processing and packaging during the same month, if the movement of bulk milk and receipt of packaged fluid milk products occur during an interval in which the facilities of the pool plant at which the milk is usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the handler's control; and

(c) Milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer, if:

(1) The dairy farmer is a State or local government which is not engaged in the route disposition of any of the returned products; and

(2) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected nonproducer status for a period of not less

than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

§ 1001.27 Diverted milk.

"Diverted milk" means milk, other than that excluded under § 1001.7 from being considered as received from a producer, which meets the following conditions:

(a) Milk which a handler in his capacity as the operator of a pool plant reports as having been moved from a dairy farmer's farm to the pool plant, but which he caused to be moved from the farm to another plant, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of subparagraph (1) or (2) of this paragraph have been met. Milk which is diverted milk under this paragraph shall be considered to have been received at the pool plant from which it was diverted, but for pricing purposes the differentials for the zone location specified in § 1001.63 shall be used.

(1) The handler caused milk from the farm to be moved to such pool plant, or to another of his pool plants which is no longer operated as a plant, on a majority of the delivery days, during the 12 months ending with the current month, on which the handler either caused milk to be moved from the farm as producer milk, or caused milk to be moved as producer milk from the farm in a tank truck.

(2) The handler caused the milk to be moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant during the month in accordance with the preceding provisions of this paragraph.

(b) Milk which a cooperative association in its capacity as a handler under § 1001.9(d) caused to be moved from a farm to a nonpool plant, if the cooperative association specifically reports the movement to such plant as a movement of diverted milk, and the conditions of subparagraph (1) or (2) of this paragraph have been met.

(1) The cooperative association caused milk from the farm to be moved to pool plants on a majority of the delivery days, during the 12 months ending with the current month, on which the cooperative association caused milk to be moved from the farm as producer milk.

(2) The cooperative association caused the milk to be moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted by the cooperative association during the month in accordance with the preceding provisions of this paragraph.

MARKET ADMINISTRATOR

§ 1001.30 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.

§ 1001.31 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

§ 1001.32 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part. His duties shall include but not be limited to those specified in this section.

(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, he shall execute and deliver to the Secretary a bond effective as of the date on which he enters upon his duties. The bond shall be conditioned upon the faithful performance of those duties and shall be in an amount and with surety thereon satisfactory to the Secretary.

(b) He shall employ and fix the compensation of any persons necessary to enable him to administer the terms and provisions of this part.

(c) He shall obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator.

(d) He shall pay from the funds provided by § 1001.87 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties except those expenses incurred under § 1001.75.

(e) He shall keep books and records to reflect clearly the transactions provided for in this part and, upon request by the Secretary, surrender them to any other person the Secretary may designate.

(f) He shall submit his books and records to examination by the Secretary and furnish any information and reports requested by the Secretary.

(g) He shall prepare and make available for the benefit of producers, handlers, and consumers, statistics and information concerning the operation of this part.

(h) He shall verify handlers' reports and payments to the extent necessary, by any appropriate means including audit of the handlers' records and, if made available, of the records of any other persons upon whose utilization the classification of butterfat and skim milk depends. If verification discloses that the original classification was incorrect, the market administrator shall make appropriate reclassification of the butterfat and skim milk.

(i) At his discretion and unless otherwise directed by the Secretary, he shall publicly announce (by posting in a conspicuous place in his office and by such other means as he deems appropriate) the name of any handler the value of whose fluid milk products is not included in the computation of the basic blended price because of failure to file reports under § 1001.40 or make payments under § 1001.82.

(j) He shall publicly announce (by posting in a conspicuous place in his office and by such other means as he deems appropriate):

(1) By the 25th day of the month, the Class I price for the following month, as computed under § 1001.60;

(2) By the 5th day of the month, the Class II price and the butterfat differential for the preceding month, as computed under §§ 1001.61 and 1001.71(b), respectively;

(3) By the 13th day of each month, the zone blended prices resulting from the adjustment of the basic blended price for the preceding month, as computed under § 1001.65, by the zone differentials contained in § 1001.62(d);

(4) Whenever required for purpose of assigning receipts from other Federal order plants under § 1001.56(b), his estimate of the utilization (to the nearest whole percentage) in each class during the month of butterfat and skim milk, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose; and

(5) By the 25th day of each January, the monthly base Class I percentage factors computed under § 1001.66(a).

(k) He shall place the sums deducted under § 1001.65(c) and retained under § 1001.80 in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such sums, or invest them in short-term U.S. Government securities.

POOL PLANT REQUIREMENTS

§ 1001.35 Distributing plants.

Each processing and packaging plant (other than a producer-handler's plant under any Federal order or a regulated plant under another Federal order) shall be a pool distributing plant in any month in which it meets the conditions specified in this section.

(a) Its total Class I disposition in the month, or in either of the 2 preceding months, is not less than 40 percent of its total receipts of fluid milk products in the corresponding month.

(b) Its route disposition in the marketing area in the month:

(1) Is not less than 10 percent of its total receipts of fluid milk products;

(2) Exceeds its route disposition in any other Federal marketing area; and

(3) Exceeds 700 quarts on any day or a daily average of 300 quarts.

§ 1001.36 Cooperative association plants located in the marketing area.

Each plant which is located in the marketing area and which is operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products.

§ 1001.37 Supply plants.

Each plant (other than a plant described in paragraph (e) of this section) shall be a pool supply plant in any month in which it meets the conditions specified in paragraph (a), and in paragraph (b), (c), or (d), of this section. For the purposes of this section, milk received at a plant from a cooperative association in its capacity as a handler under § 1001.9(d) shall be considered as received at that plant from dairy farmers' farms.

(a) It is a plant at which facilities are maintained and used for washing and sanitizing cans or tank trucks and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled, or to which milk is moved from dairy farmers' farms in tank trucks and is there transferred to stationary equipment or to other vehicles.

(b) For the month of July it is a plant from which at least 15 percent, and for any month of August through November it is a plant from which at least 25 percent of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk:

(1) To pool distributing plants; or

(2) To plants to which qualifying shipments may be made under any New England Federal order and a greater quantity of fluid milk products is shipped to pool distributing plants under this order than to the other plants.

(c) For any month of July through November, it is one of a group of plants which meets the conditions specified in this paragraph.

(1) The handler's written request for continuation of pool supply plant status, which the plant held under his operation in the preceding month, is received by the market administrator on or before the 16th day of the month.

(2) The plant does not qualify for pool plant status under another New England Federal order on the basis of shipments of fluid milk products which exceed those made to pool distributing plants under this order, and the group of plants, considered as a unit, meets the shipping requirements specified in paragraph (b) of this section.

(3) To qualify as a pool supply plant under this paragraph in November of any year, the plant, considered individually, shall have met the shipping requirements specified in paragraph (b) of this section in one of the months of July through October of that year.

(4) For the purposes of this paragraph, any supply plant operated by a cooperative association which is also a handler under § 1001.9(d) may be considered as one of a group of plants. In that event, the group's total receipts of milk from dairy farmer's farms shall be the total of such receipts by the association other than at any of its plants which is not one of the group; and the group's qualifying shipments shall consist of the qualifying shipments from the plants in the group plus the quantity of milk moved from farms of its members to other handlers' pool distributing plants by the association in its capacity as a handler under § 1001.9(d).

(d) For any month of December through June, it is a plant from which at least 15 percent of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to plants in accordance with paragraph (b) (1) or (2) of this section, or it is a plant which meets the requirements for automatic pool plant status specified in this paragraph. The automatic pool plant status of a plant shall be revoked for any month for which the market administrator has received the handler's written request for revocation on or before the 16th day of that month. In that event the plant shall not have automatic pool plant status in any subsequent month of the current December through June period.

(1) The plant was a pool supply plant in each of the preceding months of July through November; or

(2) The plant was a pool supply plant under one or another of the New England Federal orders in at least two of the preceding months of July through November and would have been such a plant in all other months in that period had it not been a pool plant under the New York-New Jersey Federal order, and a greater quantity of its receipts from dairy farmers' farms during the July through November period was pooled under this order than under any other New England Federal order.

(e) No plant shall be a pool supply plant in any month in which it is operated as:

(1) A pool distributing plant;

(2) The plant of a producer-handler under any Federal order;

(3) A regulated plant under another Federal order with a marketwide pool, including any plant which meets the requirements for pool supply plant status specified in § 1015.16(b) (3) or (5) of the Connecticut order; or

(4) A plant qualifying for pooling under a Federal order with individual-handler pools on the basis of its route disposition or on the basis of shipments of fluid milk products which exceed the shipments of fluid milk products qualifying the plant for pooling under this order.

REPORTS, RECORDS, AND FACILITIES

§ 1001.40 Monthly reports of receipts and utilization.

On or before the 8th day after the end of the month, or not later than the 10th day if the report is delivered in person to the office of the market administrator, each handler who operates a pool plant or any other plant from which there is route disposition in the marketing area, and each cooperative association in its capacity as a handler under § 1001.9(d), shall file a report for the month with the market administrator. The report for each such plant and for each such cooperative association in its capacity as a handler under § 1001.9(d) shall be in the detail and on forms prescribed by the market administrator and shall show the quantities of butterfat and of skim milk contained in:

(a) Receipts of milk and milk products in the form of:

(1) Producer milk (including the specific quantities of diverted milk and of receipts from the handler's own production);

(2) Pool milk other than producer milk;

(3) Fluid milk products and cream from all other plants;

(4) Milk from cooperative associations in their capacity as handlers under § 1001.9(d); and

(5) Fluid milk products and cream from all other sources (including the quantities of fluid milk products or cream reconstituted from other milk products and the quantities of other milk products used to fortify fluid milk products or cream);

(b) Inventories of fluid milk products and cream at the beginning and at the end of the month; and

(c) The respective quantities of fluid milk products and cream sold, distributed, used, or otherwise disposed of, classified in accordance with the provisions of §§ 1001.47 through 1001.51.

§ 1001.41 Other reports of receipts and utilization.

(a) Within 5 days after the first receipt at his pool plant of fluid milk products during the month from each plant which is neither a pool plant nor a producer-handler's plant under any New England Federal order, each handler shall file with the market administrator a report showing the identity of the operator of the shipping plant, the plant location, the quantities of bulk and packaged fluid milk products received, and such other information respecting the receipt as the market administrator may prescribe.

(b) For any month in which it is claimed that the farm of any dairy farmer from whom he received milk is located in a farm location differential area described in § 1001.72, each handler from whose plant pool milk other than producer milk is moved to a pool plant and each handler with route disposition of pool milk in the marketing area from a nonpool plant shall file with the market administrator a report showing the name, post office address, and farm location of each dairy farmer from whom he received milk at the plant during the month, and the total pounds of milk received from each farm. The report shall be submitted within 10 days after the market administrator's request, made not earlier than the 20th day after the end of the month.

(c) Each handler who is not required to file monthly reports of receipts and utilization under § 1001.40 shall file with

the market administrator reports relating to his receipts and utilization of milk and milk products at the time and in the manner prescribed by the market administrator.

§ 1001.42 Reports regarding individual producers and dairy farmers.

(a) Within 20 days after a handler begins or resumes receiving milk at his pool plant from a producer's farm or begins receiving milk by tank truck at his pool plant from a producer's farm, or a cooperative association in its capacity as a handler under § 1001.9(d) begins receiving milk from a producer's farm, the handler shall file with the market administrator a report showing the applicable date and the producer's name, post office address, and farm location. The report shall indicate, if known, the plant at which, or the cooperative association in its capacity as a handler under § 1001.9 (d) by which, the producer's milk was being received prior to the beginning or resumption of receipts from the farm by the handler.

(b) Within 15 days after the 5th consecutive day on which a handler fails to receive milk at his pool plant from a producer's farm or a cooperative association in its capacity as a handler under § 1001.9(d) fails to receive milk from a producer's farm, the handler shall file with the market administrator a report showing the last date on which he received milk from the farm and the producer's name, post office address, and farm location. The report shall indicate, if known, the reason why the handler is no longer receiving milk from the farm.

(c) With respect to a producer who moves from one farm to another the handler shall file reports as required under paragraphs (a) and (b) of this section, respectively, relative to the farm to which the producer moves and the farm from which he moves.

(d) Each handler who is not a cooperative association, upon request from any such association, shall furnish it with information with respect to each of its producer members from whose farm the handler begins, resumes, or stops receiving milk at his pool plant. Such information shall include the applicable date, the producer member's post office address and farm location, and, if known, the plant at which his milk was previously received, or the reason for the handler's failure to continue receiving milk from his farm. In lieu of providing the information directly to the association, the handler may authorize the market administrator to furnish the association with such information, derived from the handler's reports and records.

§ 1001.43 Notices to producers.

Each handler shall furnish each producer from whom he receives milk with information regarding the daily weight and composite butterfat test of the producer's milk, as follows:

(a) Within 3 days after each day on which he received milk from the producer, the handler shall give the producer written notice of the daily quantity so received; and

(b) Within 7 days after the end of any sampling period for which the composite butterfat test of the producer's milk was determined, the handler shall give the producer written notice of such composite test.

§ 1001.44 Records and facilities.

(a) Each handler shall maintain detailed and summary records showing the quantities of butterfat and of skim milk and the total thereof contained in all receipts, movements, and disposition of milk and milk products during each month, and inventories of milk and milk products at the beginning and end of the month.

(b) For the purpose of ascertaining the correctness of any report made to the market administrator as required by this part, or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in the reports submitted in accordance with this part;

(2) Verify the payments to producers, including any deductions, and the disbursement of money so deducted;

(3) Weigh, sample, and test milk and milk products; and

(4) Make whatever examination of records, operations, equipment, and facilities as the market administrator deems necessary for the purpose specified in this section.

(c) Each handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer payroll for the month, which shall show for each producer:

(1) The daily and total pounds of milk delivered and its average butterfat test; and

(2) The net amount of the handler's payments to the producer, with the prices, deductions, and charges involved.

§ 1001.45 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 the books and records pertain. If, within the 3-year period, the market administrator notifies the handler in writing that the retention of the books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain the 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 notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1001.47 Classification of milk and milk products—in general.

All butterfat and skim milk in milk and milk products required to be reported under § 1001.40 shall be classified as Class I milk or Class II milk under §§ 1001.48 through 1001.51.

§ 1001.48 Class I milk.

Subject to the provisions of §§ 1001.50 and 1001.51, Class I milk shall be all butterfat and skim milk (including that used to produce concentrated milk):

(a) Disposed of in the form of fluid milk products other than as specified in § 1001.49; or

(b) Not established as Class II milk under § 1001.49.

§ 1001.49 Class II milk.

Subject to the provisions of §§ 1001.50 and 1001.51, Class II milk shall be all butterfat and skim milk for which the handler who first receives the butterfat and skim milk proves that the butterfat and skim milk were:

(a) Disposed of, or in inventory at the end of the month, in the form of cream;

(b) Used to produce milk products other than fluid milk products or cream;

(c) Disposed of in fluid milk products for livestock feed, or disposed of in bulk fluid milk products to manufacturing establishments such as bakeries, candy factories, soup factories, and similar establishments at which the fluid milk products were used in the manufacture of food products other than milk products;

(d) Contained in fluid milk products in inventory at the end of the month to the extent not classified as Class I milk under § 1001.51;

(e) Contained in fluid milk products dumped or discarded;

(f) Contained in fluid milk products destroyed or lost under extraordinary circumstances; and

(g) In shrinkage not in excess of 2 percent of the respective quantities of butterfat and of skim milk contained in receipts of fluid milk products and cream, exclusive of diverted milk and inventory at the beginning of the month. The shrinkage on the milk of a cooperative association in its capacity as a handler under § 1001.9(d) which is received at a pool plant shall be classified as Class II milk up to the entire 2 percent maximum rate if the operator of the pool plant notifies the market administrator in writing, on or before the date on which its receipt is required to be reported under § 1001.40, that he has agreed to purchase the milk on the basis of farm bulk tank measurement readings and of the butterfat tests of samples of the milk taken from the farm bulk tank; otherwise the shrinkage on such receipts at a pool plant shall be classified as Class II milk only up to 1½ percent thereof and shrinkage of up to one-half of 1 percent on the milk so moved shall be classified as Class II milk to the cooperative association in its capacity as a handler under § 1001.9(d).

§ 1001.50 Classification of fluid milk products moved to plants.

Butterfat and skim milk in fluid milk products moved from a pool plant to any other plant, or by a cooperative association in its capacity as a handler under § 1001.9(d) to any plant, shall be classified as follows:

(a) As Class I milk if moved as packaged fluid milk products to any other plant;

(b) As Class I milk if moved from a pool plant to the plant of a producer-handler under any Federal order:

(c) In the class to which assigned under § 1001.57 if moved as bulk fluid milk products to any pool plant;

(d) In the class to which assigned under the other order if moved as bulk fluid milk products to a regulated plant under another Federal order;

(e) As Class I milk, to the extent of the total quantity of the same form of fluid milk products so moved which is utilized as Class I milk at the plant to which transferred, if moved as bulk fluid milk products to any plant other than a plant to which movements of bulk fluid milk products are subject to classification under the preceding paragraphs of this section, and as Class II milk to the extent of any remainder; and

(f) As Class I milk if moved as bulk fluid milk products to any plant other than a pool plant or a regulated plant under another Federal order and thence to another plant, not regulated under a Federal order, located outside the New England States and New York State.

§ 1001.51 Classification of inventories.

All butterfat and skim milk contained in inventories of fluid milk products at the end of each month shall be classified as Class I milk pending final disposition of the fluid milk products, if the handler requests such classification and either receives no milk from producers or does not claim classification as Class II milk of any fluid milk products.

ASSIGNMENT OF RECEIPTS

§ 1001.53 Assignment of receipts to classes—in general.

(a) The total quantities of butterfat and of skim milk received during the month at each pool plant and by each cooperative association in its capacity as a handler under § 1001.9(d) (including those quantities in inventory at the beginning of the month) shall be assigned separately, in the manner and sequence provided in §§ 1001.54 through 1001.58, to the respective quantities of butterfat and of skim milk classified as Class I milk and Class II milk under §§ 1001.47 through 1001.51.

(b) Except as provided in § 1001.56, whenever receipts have been assigned under §§ 1001.54 through 1001.58 to the remaining pounds in a class, all remaining receipts shall be assigned to the other class.

(c) If receipts from more than one plant are to be assigned under a paragraph in § 1001.55 or § 1001.57, or under § 1001.58, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the nearest zone to Boston for assignments to Class I milk and beginning with the plant in the most distant zone from Boston for assignments to Class II milk.

§ 1001.54 Initial assignments to Class I milk.

(a) Assign to Class I milk the quantities received in exempt milk.

(b) Assign to Class I milk the quantities in packaged fluid milk products received from regulated plants under other Federal orders, if the fluid milk products received are classified and priced under the other orders as Class I milk or the equivalent thereof or in accordance with their assignment under this part.

(c) Assign to Class I milk the quantities in packaged fluid milk products received from other pool plants.

(d) Assign to Class I milk the quantities in fluid milk products in inventory at the beginning of the month which were classified as Class I milk in the preceding month.

§ 1001.55 Initial assignments to Class II milk.

(a) Assign to Class II milk the quantities in fluid milk products or cream reconstituted from other milk products, and the quantities in other milk products used to fortify fluid milk products or cream. If the quantity of any reconstituted product is not known, the quantities assigned shall be the quantity of butterfat used in the reconstitution and the quantity of skim milk required to produce the milk products so used. Any unaccounted-for plain condensed milk or skimmed milk, dry whole milk, or nonfat dry milk shall be considered to have been used in the reconstitution of fluid milk products.

(b) Assign to Class II milk the quantities in cream in inventory at the beginning of the month and received during the month.

(c) Assign to Class II milk the quantities in fluid milk products (other than exempt milk) received from a local or State government which has elected nonproducer status for the month under § 1001.26(c).

(d) Assign to Class II milk the quantities in fluid milk products in inventory at the beginning of the month not assigned under § 1001.54(d).

(e) Assign to Class II milk the quantities in fluid milk products received from producer-handlers under any Federal order and from exempt distributing plants under any New England Federal order; and in receipts from dairy farmers which are rejected and segregated in the handler's normal operation for receiving milk, and are accepted and disposed of by the handler as salvage product rather than as milk.

(f) Assign to Class II milk the quantities in bulk fluid milk products received from distributing plants for unregulated markets located within one of the New England States or in zone 40 or a nearer zone.

(g) At pool plants other than pool distributing plants, assign to Class II milk the quantities in fluid milk products received from plants located outside the New England States and beyond zone 40, if the fluid milk products received are not classified and priced under any Federal order.

(h) Assign to Class II milk the quantities in fluid milk products received from plants located within one of the New England States or in zone 40 or a nearer zone, except receipts assigned under paragraph (f) of this section and receipts which are classified and priced under any Federal order.

§ 1001.56 Special assignments to classes.

(a) At pool distributing plants, assign to Class II milk, to the extent of the respective remaining pounds in that class, the quantities in bulk fluid milk products received from each regulated plant or handler under another Federal order, if the shipper and the operator of the receiving plant have both requested such Class II classification and assignment.

(b) At pool distributing plants, assign in the manner provided in subparagraphs (1) and (2) of this paragraph any remaining receipts of bulk fluid milk products from each regulated plant under another Federal order, if such receipts are classified and priced under the other order as Class I milk or the equivalent thereof or in accordance with their assignment under this part.

(1) Assign the quantities in such receipts to Class I milk and Class II milk in proportion to the estimated percentages of butterfat and skim milk, respectively, in each class in producer milk of all handlers for the month as announced under § 1001.32(j)(4), or in proportion to the respective remaining pounds in each class at all of the handler's pool plants, whichever procedure results in the greater combined quantity of butterfat and of skim milk in such receipts being assigned to Class II milk.

(2) The quantities assigned to Class II milk under this paragraph shall not exceed the respective quantities of butterfat and of skim milk in Class II milk remaining at all of the handler's pool plants. Any remaining receipts shall be assigned to Class I milk.

(c) If the quantity to be assigned to a class under paragraph (b) of this section exceeds the respective quantity remaining in that class at the pool distributing plant, the remaining quantity shall be increased to the quantity to be assigned to that class and the respective remaining quantity in that class at the handler's other pool plants shall be decreased to the same extent, in sequence beginning with the plant in the zone nearest to Boston. The respective quantity remaining in the other class thereupon shall be decreased correspondingly at the pool distributing plant and shall be increased correspondingly at those other pool plants involved in the adjustment.

(d) The quantities assigned under this section shall be limited to the excess of the receipts from a plant over the respective quantities in bulk fluid milk products moved to that plant from the pool distributing plant.

§ 1001.57 Additional assignments to Class I milk.

(a) At pool distributing plants, assign to Class I milk the quantities in bulk fluid milk products received from the

handler's pool plants located in the nearby plant zone.

(b) Assign to Class I milk the quantities received from other handlers' pool plants in bulk fluid milk products for which classification as Class II milk has not been requested by both handlers.

(c) Assign to Class I milk the quantities received in milk from producers and from cooperative associations in their capacity as handlers under § 1001.9(d).

(d) Assign to Class I milk the quantities received from the handler's pool plants in bulk fluid milk products not assigned under paragraph (a) of this section.

(e) At pool distributing plants, assign to Class I milk the quantities received from plants located outside the New England States and beyond zone 40 in pool milk other than producer milk, if the fluid milk products received are not classified and priced under any Federal order.

(f) Assign to Class I milk the quantities received from other handlers' pool plants in bulk fluid milk products for which classification as Class II milk has been requested by both handlers.

(g) At pool plants other than pool distributing plants, assign to Class I milk the quantities in bulk fluid milk products received from regulated plants or handlers under other Federal orders, if such receipts are classified and priced under the other order as Class I milk or the equivalent thereof or in accordance with their assignment under this part.

§ 1001.58 Additional assignment to Class II milk.

Assign to Class II milk the quantities received from regulated plants under other Federal orders in fluid milk products not previously assigned to classes under §§ 1001.54 through 1001.57.

MINIMUM PRICES

§ 1001.60 Class I price.

The Class I price per hundredweight of milk containing 3.5 percent butterfat, at plants located in zone 21, shall be computed for each month as specified in this section. The latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday the latest figures available on the next succeeding workday shall be used.

(a) Compute an economic index, with the year 1958 as the base period, as follows:

(1) Calculate a U.S. wholesale commodity price index by dividing the monthly wholesale price index for all commodities (as reported by the Bureau of Labor Statistics, U.S. Department of Labor, with the years 1957–59 as the base period) by 1.0025.

(2) Calculate a New England consumer income index by multiplying the current annual rate of per capita disposable personal income in the United States (based upon the quarterly figure released by the U.S. Department of Commerce or the Council of Economic Advisers to the President) by the New England adjustment percentage and dividing the result by 20.50. The New England adjustment percentage shall be the current percentage relationship of per capita personal income in New England to per capita personal income in the United States (using data on per capita personal income by States and regions as published by the U.S. Department of Commerce).

(3) Calculate a New England dairy ration index by dividing the monthly average price paid by farmers in the New England region for 100 pounds of mixed dairy feed containing less than 29 percent protein (as reported by the U.S. Department of Agriculture) by 0.03884.

(4) Calculate a New England farm wage rate index by dividing the weighted average farm wage rate for the New England region by 1.9833. The weighted average farm wage rate for the New England region shall be the average of the farm wage rates for the New England region (as reported by the U.S. Department of Agriculture) weighted by the factors indicated in the following table.

	Weighting factor
Per month with board and room	1.00
Per month with house	1.00
Per week with board and room	4.33
Per week without board or room	4.33
Per day without board or room	26.00

(5) Calculate a New England grain-labor cost index by multiplying the New England dairy ration index by 0.6 and the New England farm wage rate index by 0.4, and combining the two results.

(6) The economic index shall be the result of dividing by seven the sum of three times the U.S. wholesale commodity price index, the New England consumer income index, and three times the New England grain-labor cost index.

(b) Compute an economic index price as follows:

(1) Multiply the economic index by $0.0557, expressing the result to the nearest mill.

(2) Divide the Class I-A price for the month computed under the New York-New Jersey Federal order, applicable to milk containing 3.5 percent butterfat received at plants located in the 201–210-mile freight zone, by the utilization adjustment percentage which entered into the computation of that price, expressing the result to the nearest mill.

(3) The economic index price shall be the price computed in subparagraph (1) of this paragraph, except that its deviation from the result obtained in subparagraph (2) of this paragraph shall be limited to $0.09.

(c) Compute a supply-demand adjustment factor (using quantities announced in the statistical reports of the respective market administrators for the New England Federal orders for the second, third, and fourth months preceding the month for which the price is being computed but excluding receipts and sales of plants which become regulated on the basis of their sales in the area of extension) as follows:

(1) For each of the three months, determine the total Class I producer milk and the total producer milk for the New England Federal order markets by combining the respective totals for the individual markets.

(2) For each of the three months, divide the total Class I producer milk for the New England Federal order markets by the base Class I percentage factor for the same month as determined under § 1001.66(a). The result shall be the New England base supply for that month.

(3) For each of the three months, express the total producer milk for the New England Federal order markets as a percentage of the New England base supply for the same month. The simple average of the three resulting percentages shall be the percentage of base supply.

(4) The supply-demand adjustment factor shall be the figure in the following table opposite the bracket within which the percentage of base supply falls. When the percentage of base supply falls in an interval between brackets, the supply-demand adjustment shall be the figure shown for the next higher bracket if the factor for the previous month was based on a bracket higher than such interval, and shall be the figure for the next lower bracket if the factor for the previous month was based on a bracket lower than such interval.

Percentage of base supply: [1]	*Supply-demand adjustment factor*
90.5–91.5	1.06
92.0–93.0	1.05
93.5–94.5	1.04
95.0–96.0	1.03
96.5–97.5	1.02
98.0–99.0	1.01
99.5–100.5	1.00
101.0–102.0	.99
102.5–103.5	.98
104.0–105.0	.97
105.5–106.5	.96
107.0–108.0	.95
108.5–109.5	.94

[1] If the percentage of base supply calculated according to subparagraph (3) of this paragraph falls outside the extremes shown in this column, the supply-demand adjustment factor shall be determined by extending the table at the indicated rate of extension.

(d) The Class I price shall be the result, rounded to the nearest full cent, of the economic index price determined under paragraph (b) of this section, multiplied by the supply-demand adjustment factor determined under paragraph (c) of this section, except that from the effective date of this amendment the Class I price each month shall be $6.39 through April 1968.

§ 1001.61 Class II price.

The Class II price per hundredweight of milk containing 3.5 percent butterfat, at plants located in zone 21, shall be computed for each month as specified in this section.

(a) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported by the U.S. Department of Agriculture on a preliminary basis for the month, by subtracting for each one-tenth of 1 percent of average butterfat content above 3.5

percent, or adding for each one-tenth of 1 percent of average butterfat content below 3.5 percent, an amount per hundredweight which shall be calculated by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported by the U.S. Department of Agriculture for the period beginning with the 16th day of the preceding month and ending with the 15th day of the current month.

(b) Adjust the result obtained in paragraph (a) of this section by the amount shown below for the applicable month:

Month:	*Amount*
January	+$0.08
February	+.07
March	.00
April	−.04
May	−.07
June	−.06
July	+.08
August	+.15
September	+.11
October	+.11
November	+.11
December	+.11

NOTE: Milk Order No. 1, 32 F.R. 13804, October 4, 1967, reads in part as follows:

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 for milk delivered on and after September 1, 1967: In § 1001.61(b), all of the text and table except that which reads as follows: (b) Adjust the result obtained in paragraph (a) of this section by +0.07. *It is therefore ordered,* That the aforesaid provisions of the order are hereby suspended for an indefinite period.

§ 1001.62 Zone differentials.

The class prices and blended prices computed under §§ 1001.60, 1001.61, and 1001.65 shall be subject to zone differentials based upon the zone locations of plants. The zone location of any plant and the differentials applicable to each zone location shall be determined as specified in this section.

(a) Each plant which is located in any of the places specified in this paragraph shall be in the "nearby plant" zone.

CONNECTICUT

All of the State of Connecticut.

MASSACHUSETTS

COUNTIES

Barnstable.	Middlesex.
Bristol.	Nantucket.
Dukes.	Norfolk.
Essex.	Plymouth.
Franklin.	Suffolk.
Hampden.	Worcester.
Hampshire.	

TOWNS

Sandisfield.	Becket.
Savoy.	Florida.
Washington.	Hinsdale.
Windsor.	Otis.
Peru.	

RHODE ISLAND

All of the State of Rhode Island.

(b) The zone location of each plant which is outside the "nearby plant" zone shall be based upon its highway mileage distance to Boston, as determined by use of Mileage Guide No. 8, and supplements to and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Washington, D.C. The mileages used shall be those shown between designated key points in the mileage charts, and between named points on the appropriate State road maps, as published in the mileage guide. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located.

(c) The distance for each plant shall be the mileage between Boston and the named point nearest to the plant, as shown in the mileage charts. If that named point is not listed in the mileage charts, the distance for the plant shall be the lowest mileage distance between Boston and that named point, computed as follows:

(1) Determine from the charts the mileage between Boston and each of the three key points nearest to the named point which are nearer to Boston than the named point.

(2) For each of these key points, add to the result in subparagraph (1) of this paragraph the mileage between the key point and the named point, measured to the greatest possible extent over roads designated as paved, all-weather roads.

(d) The zone differentials for each plant shall be those applicable to its zone location as shown in the following table.

DIFFERENTIALS FOR DETERMINATION OF ZONE PRICES

Distance to Boston (miles)	Plant location zone	Class I and blended price differentials (cents per hundredweight)	Class II price differentials (cents per hundredweight)
Various	Nearby plant	+40.0	+5.8
31 to 40	4	+36.4	+4.5
41 to 50	5	+35.2	+4.2
51 to 60	6	+34.0	+4.0
61 to 70	7	+32.8	+3.7
71 to 80	8	+31.6	+3.5
81 to 90	9	+30.4	+3.2
91 to 100	10	+29.2	+3.0
101 to 110	11	+28.0	+2.9
111 to 120	12	+26.8	+2.6
121 to 130	13	+25.6	+2.4
131 to 140	14	+24.4	+2.1
141 to 150	15	+7.2	+1.6
151 to 160	16	+6.0	+1.3
161 to 170	17	+4.8	+1.2
171 to 180	18	+3.6	+.6
181 to 190	19	+2.4	+.4
191 to 200	20	+1.2	+.1
201 to 210	21	0	0
211 to 220	22	−1.0	−.6
221 to 230	23	−2.0	−.7
231 to 240	24	−3.0	−.9
241 to 250	25	−4.0	−.9
251 to 260	26	−5.0	−1.2
261 to 270	27	−6.0	−1.3
271 to 280	28	−7.0	−1.5
281 to 290	29	−8.0	−1.6
291 to 300	30	−9.0	−1.8
301 to 310	31	−10.0	−2.3
311 to 320	32	−11.0	−2.4
321 to 330	33	−12.0	−2.5
331 to 340	34	−13.0	−2.8
341 to 350	35	−14.0	−2.8
351 to 360	36	−15.0	−3.0
361 to 370	37	−16.0	−3.1
371 to 380	38	−17.0	−3.3
381 to 390	39	−18.0	−3.4
391 to 400	40	−19.0	−3.5
401 and over	41 and over	(1)	−3.5

[1] Class I and blended price differentials applicable to plants located more than 400 miles from Boston shall be obtained by extending the table at the rate of 1 cent for each additional 10 miles except that in no event shall the Class I or blended price at any zone be less than the Class II price for the month for plants in the same zone.

(e) Notwithstanding the provisions of paragraphs (b) and (c) of this section, for any named point located in New England and New York State, determine the highway mileage distance between Boston and the named point by use of the appropriate State maps contained in Mileage Guide No. 7, issued by Household Goods Carriers' Bureau, Agent, Washington, D.C. Such distance shall be the lowest highway mileage between Boston and the named point on the map, over roads designated thereon as paved, all-weather roads. In the event that the named point is not located on a through, paved, all-weather road, such other roads shall be used to reach a through, paved, all-weather road as will result in the lowest highway mileage to Boston, except that such other roads shall not be used for a distance of more than 15 miles if it is otherwise possible to connect with a through, paved, all-weather road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located. The mileage so determined, or the mileage determined under paragraphs (b) and (c) of this section, whichever is less, shall be considered to be the lowest highway mileage distance between Boston and the named point.

§ 1001.63 Determination of applicable zone locations for pricing purposes.

In computing the value of fluid milk products at class prices under § 1001.64, the minimum amounts payable to producers under § 1001.70, the minimum amounts payable to cooperative associations under § 1001.76, and the handlers' producer settlement fund debits and credits under § 1001.81, the differentials specified in § 1001.62 for the zone location of the plant for which the computation is being made shall be used except that for the following items the differentials for the zone locations specified shall be used:

(a) For producer milk diverted by any handler, including a cooperative association in its capacity as a handler under § 1001.9(d), from a pool plant in zone 14 or a nearer zone to a plant located in any zone more distant than zone 14, the zone location of the plant to which the milk was diverted;

(b) For producer milk of a cooperative association in its capacity as a handler under § 1001.9(d) moved to a pool plant, the zone location of the plant to which the milk was moved;

(c) For milk of a cooperative association in its capacity as a handler under § 1001.9(d) in diversions to nonpool plants other than diversions described in paragraph (a) of this section, the zone location of the pool plant, or pool plants within the same zone, to which, during the current month or the most recent month, the association moved the greatest aggregate quantity of milk from the farms of the producers whose milk was diverted;

(d) For milk of a cooperative association in its capacity as a handler under

§ 1001.9(d) in shrinkage, overage, extraordinary loss, and ending inventory, the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of such milk of the cooperative association was moved during the current month or the most recent month;

(e) For beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d), the zone location at which the milk was priced as ending inventory during the previous month;

(f) For receipts of pool milk other than producer milk from plants, the zone location of the plant from which it was received;

(g) For receipts assigned to Class I milk under §§ 1001.55 (e) and (f), and 1001.58, the zone location of the plant from which the product was received; and

(h) For any excess of beginning inventory assigned to Class I milk under § 1001.55(d) over the quantities of producer milk and of milk from cooperative associations in their capacity as handlers under § 1001.9(d) assigned to Class II milk in the preceding month, the zone location of the pool plants from which an equivalent quantity of receipts of fluid milk products were assigned to Class II milk in the preceding month in sequence beginning with the plant in the zone nearest to Boston.

§ 1001.64 Computation of value of fluid milk products at class prices.

For each month, the market administrator shall compute, as specified in this section, the value of fluid milk products at class prices, at each plant other than the plant of a producer-handler under any Federal order, and of the fluid milk products of each cooperative association in its capacity as a handler under § 1001.9(d) which were not moved to a pool plant. The prices used shall be those for the applicable zone locations as determined under § 1001.63.

(a) Multiply by the applicable class prices the quantities of:

(1) Producer milk assigned under § 1001.57(c), except that for any cooperative association in its capacity as a handler under § 1001.9(d), the quantity of producer milk shall be reduced by the total quantity of milk moved to pool plants during the month, to the limit of the quantity of producer milk;

(2) Pool milk other than producer milk assigned under §§ 1001.55 (g) and (h), 1001.56, and 1001.57 (e) and (g); and

(3) Milk received at a pool plant from a cooperative association in its capacity as a handler under § 1001.9(d) and assigned under § 1001.57(c).

(b) Multiply by the applicable Class I prices the quantities of:

(1) Product assigned to Class I milk under §§ 1001.54(d) and 1001.55 (a) through (c);

(2) Product assigned to Class I milk under § 1001.55(d), except that for any cooperative association in its capacity as a handler under § 1001.9(d), the quantity shall be reduced by the quantity of any excess of milk moved to pool plants during the month over the quantity of producer milk, to the limit of the quantity assigned to Class I milk under § 1001.55(d); and

(3) Product assigned to Class I milk under §§ 1001.55(e) and (f), and 1001.58.

(c) If the total quantity of butterfat or of skim milk classified as Class I milk or Class II milk under §§ 1001.47 through 1001.51 exceeds the respective total quantity assigned to that class under §§ 1001.53 through 1001.58, multiply the excess (overage) by the applicable class price, adjusted by the butterfat differential.

(d) Multiply by the applicable Class I price the quantity of pool milk distributed as route disposition in the marketing area from the handler's nonpool plant.

(e) Multiply by the applicable Class II prices the quantities of:

(1) Product assigned to Class I milk under § 1001.55 (a) through (c); and

(2) Product assigned to Class I milk under §§ 1001.55 (e) and (f), and 1001.58.

(f) Multiply by the applicable Class I price for the preceding month the product assigned to Class I milk under § 1001.54(d).

(g) Multiply by the applicable Class II price for the preceding month the quantity of product for which a value is determined under subparagraph (b)(2) of this section.

(h) For any cooperative association in its capacity as a handler under § 1001.9(d), multiply by the applicable Class II price for the preceding month the quantity of any excess of milk moved to pool plants during the month over the quantity of producer milk, to the limit of the quantity of milk in its inventory at the beginning of the month.

(i) Add together the amounts obtained under paragraphs (a) through (d) of this section and subtract therefrom the sum of the amounts obtained under paragraphs (e) through (h) of this section.

§ 1001.65 Basic blended price.

The basic blended price per hundredweight of pool milk containing 3.5 percent butterfat, applicable to plants located in zone 21, shall be computed for each month as specified in this section.

(a) Combine into one total the respective values of fluid milk products at class prices computed under § 1001.64 for each handler from whom the market administrator has received at his office, prior to the 11th day after the end of the month, the reports for the month prescribed in § 1001.40 and the payment for the preceding month required under § 1001.82(a).

(b) Deduct the amount of the plus differentials, and add the amount of the minus differentials, which are applicable under §§ 1001.62, and 1001.63, 1001.72, and 1001.81(a)(3).

(c) Subtract for each of the months of March, April, May, and June an amount computed by multiplying the total hundredweight of pool milk included in these computations by 10 cents in March, 20 cents in April, and 30 cents in May and June.

(d) Add for the months of August, September, and October, respectively, an amount representing 25 percent, 30 percent, and 30 percent of the aggregate amount subtracted under paragraph (c) of this section for the prior period of March–June, and for November add the remainder of the amount subtracted under paragraph (c) and the interest earned on the aggregate fund.

(e) Add the amount of the unobligated balance of the producer-settlement fund as at the close of business on the 10th day after the end of the month.

(f) Divide the resulting amount by the total hundredweight of pool milk for which a value is included under paragraph (a) of this section.

(g) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in the producer-settlement fund.

§ 1001.66 Factors used in formulas.

(a) The base Class I percentage factors to be used in the computation of the Class I price under § 1001.60 for each of the 12 months beginning with February of each year shall be computed on or before January 25 of that year as specified in this paragraph.

(1) For each month of the 3 preceding years and for December of the fourth preceding year (using the most recent statistical reports of the market administrators for the New England Federal orders) compute the daily average of the total Class I producer milk under all the New England Federal orders and the daily average of the total receipts from producers under all the New England Federal orders.

(2) For each of the two series of daily averages, using the median link-relative method, compute a seasonal index for each month, rounded to two decimal places.

(3) For each month, multiply the seasonal index of Class I producer milk by 0.6812 and divide the product by the seasonal index of receipts from producers for the same month. The result, rounded to one decimal place, shall be the base Class I percentage factor for the month.

(b) If for any reason a price, index, or wage rate specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the market administrator shall use one determined by the Secretary to be equivalent to the factor which is specified.

PAYMENTS—GENERAL

§ 1001.70 Payments to producers.

(a) On or before the 5th day after the end of the month, each handler shall pay each producer for the approximate value of milk received from him during the first 15 days of the month. This payment shall be at a rate not less than the applicable zone Class II price for the month.

(b) On or before the 20th day after the end of the month, each handler shall make final payment to each producer for the total value of milk received from him during the month at not less than the basic blended price per hundredweight computed under § 1001.65, adjusted by the zone and butterfat [, *and farm location*][1] differentials applicable under §§ 1001.62, 1001.63, and 1001.71 [, *and 1001.72*],[1] minus the amount of the payment made to the producer under paragraph (a) of this section.

(c) If the handler's net payment to a producer is for an amount less than the total amount due the producer under this section, the burden shall rest upon the handler to prove to the market administrator that each deduction from the total amount due is properly authorized, and properly chargeable to the producer.

(d) In making payments to producers under paragraph (b) of this section, the handler may use the simple average of the butterfat tests of semimonthly composite samples of the milk unless the difference between the semimonthly tests is more than two points (0.2 percent) or the quantity of milk received from the producer in either semimonthly period is as much as three times as large as the quantity received from him in the other semimonthly period.

(e) In making payment to producers under paragraph (b) of this section for milk diverted from a pool plant in Zone 14 or a nearer zone to a plant located in any zone more distant than Zone 14, the handler may elect to pay such producers at the price applicable at the zone location of the plant from which the milk was diverted, if the resulting net payment to each producer is not less than that otherwise required under this section and the rate of payment and the deductions shown on the statement required to be furnished under § 1001.73 are those used in computing the payment.

§ 1001.71 Butterfat differential.

(a) In making the payments to producers required under § 1001.70 and the payments to cooperative associations required under § 1001.76(d), each handler shall add for each one-tenth of 1 percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of 1 percent of average butterfat content below 3.5 percent, as a butterfat differential, an amount per hundredweight which shall be computed by the market administrator under paragraph (b) of this section.

(b) Multiply by 1.20 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported by the U.S. Department of Agriculture for the period beginning with the 16th day of the preceding month and ending with the 15th day of the current month, and divide the result by 10.

§ 1001.72 Farm location differentials.

[*In making the payments to producers required under § 1001.70, each handler shall add any applicable farm location differential specified in this section.*][1]

(a) With respect to milk received from a producer whose farm is located within any of the places specified in this paragraph, the differential shall be 46 cents per hundredweight, unless the addition of 46 cents gives a result greater than the Class I price determined under §§ 1001.60, 1001.62, and 1001.63 which is effective at the plant at which the milk is received. In that event there shall be added a rate which will produce that price.

CONNECTICUT

All of the State of Connecticut east of the Connecticut River and the towns of:

Granby. Suffield.

MAINE

The towns of:

Eliot. Kittery.

MASSACHUSETTS

All counties other than Berkshire County.

NEW HAMPSHIRE

Rockingham County, and the following cities and towns:

Allenstown. Amherst. Barrington. Bedford. Bow. Brookline. Chichester. Deering. Dover. Durham. Epsom. Francestown. Goffstown. Greenfield. Greenville. Hinsdale. Hollis. Hooksett. Hudson. Lee. Litchfield. Lyndeborough. Madbury. Manchester. Mason. Merrimack. Milford. Mount Vernon. Nashua. New Boston. New Ipswich. Pelham. Pembroke. Pittsfield. Rochester. Rollinsford. Strafford. Temple. Weare. Wilton. Winchester.

RHODE ISLAND

All of the State of Rhode Island.

VERMONT

The towns of:

Guilford. Halifax. Readsboro. Vernon. Whitingham.

(b) With respect to milk received from a producer whose farm is located within any of the following cities and towns, the differential shall be 23 cents per hundredweight, unless the addition of 23 cents gives a result greater than the Class I price determined under §§ 1001.60, 1001.62, and 1001.63 which is effective at the plant at which the milk is received. In that event there shall be added a rate which will produce that price.

MAINE

Berwick. Kennebunk. Kennebunkport. Lebanon. Lyman. North Berwick. Sanford. South Berwick. Wells. York.

MASSACHUSETTS

Becket. Florida. Hinsdale. Otis. Peru. Sandisfield. Savoy. Washington. Windsor.

NEW HAMPSHIRE

Antrim. Barnstead. Bennington. Boscawen. Bradford. Canterbury. Chesterfield. Concord. Dublin. Dunbarton. Farmington. Fitzwilliam. Gilmanton. Gilsum. Hancock. Harrisville. Henniker. Hillsborough. Hopkinton. Jaffrey. Keene. Loudon. Marlborough. Middleton. Milton. Nelson. Northfield. Peterborough. Richmond. Rindge. Roxbury. Sharon. Somersworth. Stoddard. Sullivan. Surry. Swanzey. Troy. Webster. Westmoreland. Windsor.

VERMONT

Brattleboro. Brookline. Dover. Dummerston. Marlboro. Newfane. Putney. Wilmington.

§ 1001.73 Statements to producers.

In making the payments to producers required under § 1001.70, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

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

(b) The pounds and butterfat test of milk which is received from the producer, or if more than one minimum rate of payment is applicable to the producer's milk under § 1001.70, the respective pounds and test to which each minimum rate of payment applies;

(c) The minimum rate or rates, including the butterfat differential, at which payment to the producer is required under § 1001.70;

(d) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(e) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under §§ 1001.75 and 1001.76, together with a description of the respective deductions; and

(f) The net amount of payment to the producer.

§ 1001.74 Adjustment of payments to producers.

Whenever the market administrator's verification of a handler's payments to producers discloses payment to a producer of an amount less than is required by § 1001.70, the handler shall make payment of the balance due the producer not later than the 20th day after the end of the month in which the handler is notified of the deficiency.

§ 1001.75 Marketing service deductions.

(a) In making the payments required by § 1001.70 to producers, other than

[1] Under suspension pursuant to order of Jan. 13, 1967 (32 F.R. 446, F.R. Doc. 67-569).

himself and any producer who is a member of a cooperative association which the Secretary determines is performing the services specified in this section, each handler shall deduct 3 cents per hundredweight, or such lesser rate as the Secretary shall determine to be sufficient, for marketing services. The handler shall pay the amount deducted to the market administrator on or before the 18th day after the end of the month.

(b) The market administrator shall expend amounts received under paragraph (a) of this section only in providing for market information to such producers and for verification of weights, samples, and tests of milk received from them. The market administrator may contract with a cooperative association for the furnishing of the whole or any part of these services.

§ 1001.76 Payments to cooperative associations.

(a) Each cooperative association may file with a handler who is not a cooperative association a claim either for the payments which the handler is required to make to the association's producer members under § 1001.70 or for authorized deductions from such payments. The claim shall contain a list of the producers to whom the payments are due or to whom the deductions apply, an agreement to indemnify the handler in the making of such payments or deductions, and a certification that the association has, with each producer listed, an unterminated membership contract authorizing the payment or deduction.

(b) The handler shall withhold from the association's producer members the payments or the deductions specified in paragraph (a) of this section in accordance with the association's claim. He shall pay the amounts withheld to the association on or before the dates on which such amounts otherwise would have been due to the producer members under § 1001.70.

(c) For each producer member from whom payment was withheld, the handler shall furnish the association a supporting statement showing the information required to be furnished to the producer under § 1001.73. For each producer member from whom a deduction is made under this section, the handler shall furnish the association a statement showing the pounds of milk received.

(d) Each handler who receives fluid milk products at his plant from a cooperative association in its capacity as the operator of a pool plant or in its capacity as a handler under § 1001.9(d) shall make payment to the association for such receipts as follows:

(1) On or before the 5th day after the end of the month, for the approximate value of the fluid milk products received from the association during the first 15 days of the month. This payment shall be at a rate not less than the applicable zone Class II price for the month. The payment made to the association under this subparagraph shall constitute partial payment of the total amount required to be paid under this paragraph.

(2) On or before the 20th day after the end of the month, for not less than the total value of fluid milk products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under §§ 1001.54 and 1001.57 by the class prices for the month, adjusted by the zone and butterfat differentials applicable under §§ 1001.62, 1001.63, and 1001.71.

(3) On or before the 20th day after the end of the month, for not less than the total value of milk received from the cooperative association in its capacity as a handler under § 1001.9(d), at the basic blended price per hundredweight for the month computed under § 1001.65, adjusted by the zone and butterfat differentials applicable under §§ 1001.62, 1001.63, and 1001.71.

(4) Whenever the market administrator's verification of a handler's payments under this paragraph discloses an underpayment, the handler shall make payment of the balance due the cooperative association not later than the 20th day after the end of the month in which the handler is notified of the deficiency.

PAYMENTS—PRODUCER SETTLEMENT FUND

§ 1001.80 Producer settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer settlement fund." He shall deposit into the fund all amounts received from handlers under §§ 1001.82, 1001.83, and 1001.84. He shall pay from the fund all amounts due handlers under §§ 1001.82, 1001.83, and 1001.84, subject to his right to offset any amounts due from the handler under these sections. All amounts subtracted under § 1001.65 (c), inclusive of interest earned thereon, shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1001.65(d).

§ 1001.81 Handlers' producer settlement fund debits and credits.

On or before the 15th day after the end of the month, the market administrator shall render a statement to each handler showing the amount of the handler's producer settlement fund debit or credit, as calculated in this section.

(a) The producer settlement fund debit or credit for each plant and each cooperative association in its capacity as a handler under § 1001.9(d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of pool milk and the quantities of fluid milk products received at the pool plant from cooperative associations in their capacity as handlers under § 1001.9(d) by the basic blended price computed under § 1001.65 adjusted by any zone differentials applicable under §§ 1001.62 and 1001.63.

(2) [*Multiply the quantities of producer milk which are subject to farm location differentials under § 1001.72 (a) and (b) by the respective rates applicable under those paragraphs.*][2]

(3) With respect to any nonpool plant from which pool milk other than producer milk was received or distributed, divide the respective quantities of milk received at the plant directly from dairy farmers' farms located in the farm location differential areas described in § 1001.72 (a) and (b) by the total receipts of fluid milk products at the plant, multiply by 100, and apply the resulting percentages to the total quantity of pool milk received or distributed from the plant. Multiply each resulting quantity by the respective farm location differential rate specified in § 1001.72(a) or (b). Until such time as full information relative to all receipts at the plant, including the respective quantities of milk received directly from dairy farmers' farms in each farm location differential area, is submitted to the market administrator, it shall be considered that none of the farms from which milk was received at the plant is located in a farm location differential area.

(4) Combine the values obtained under subparagraphs (1) through (3) of this paragraph.

(5) For any cooperative association in its capacity as a handler under § 1001.9 (d), multiply the quantities of milk moved to each pool plant by the basic blended price computed under § 1001.65 adjusted by any zone differentials applicable under §§ 1001.62 and 1001.63; and to the result add the value determined under § 1001.64.

(6) If the value of fluid milk products, as determined under § 1001.64 for any plant, or as determined under subparagraph (5) of this paragraph for any cooperative association in its capacity as a handler under § 1001.9(d), is greater than the credit as determined under subparagraph (4) of this paragraph, the difference shall be the producer settlement fund debit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(7) If the value of fluid milk products, as determined under § 1001.64 for any plant, or as determined under subparagraph (5) of this paragraph for any cooperative association in its capacity as a handler under § 1001.9(d), is less than the credit as determined under subparagraph (4) of this paragraph, the difference shall be the producer settlement fund credit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(b) The producer settlement fund debit or credit of any handler shall be the net of the producer settlement fund debits and credits as computed for all of its operations under paragraph (a) of this section.

§ 1001.82 Payments to and from the producer settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall make payment to the market administrator of the amount of the handler's producer settlement fund debit for the month as determined under § 1001.81.

[2] Under suspension pursuant to order of Jan. 13, 1967 (32 F.R. 446, F.R. Doc. 67-569).

(b) On or before the 20th day after the end of the month, the market administrator shall make payment to each handler of the amount of the handler's producer settlement fund credit for the month as determined under § 1001.81.

§ 1001.83 Adjustment of errors in producer settlement fund payments.

Whenever the market administrator's verification of reports or payments of any handler discloses an error in producer settlement fund payments made under § 1001.82, the market administrator shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 11th day of the prior month and ending with the 10th day of the current month shall be payable by the handler to the market administrator on or before the 18th day of the current month. Adjustment credits issued during that period shall be payable by the market administrator to the handler on or before the 20th day of the current month.

§ 1001.84 Adjustment of overdue producer settlement fund accounts.

Any producer settlement fund account balance due from or to a handler under §§ 1001.82, 1001.83, or 1001.84, for which remittance has not been received in or paid from the market administrator's office by the close of business on the 20th day of any month, shall be increased one-half of 1 percent effective the following day. Any remittance received by the market administrator after the 20th day of any month in an envelope which is postmarked not later than the 18th day of the month shall be considered to have been received by the 20th day of that month.

ADMINISTRATION EXPENSE

§ 1001.87 Payment of administration expense.

On or before the 18th day after the end of the month, each handler shall make payment to the market administrator of his pro rata share of the expense of administration of this part. The payment shall be at the rate of 4 cents per hundredweight, or such lesser rate as the Secretary may prescribe. The payment shall apply to:

(a) All of a handler's receipts at pool plants during the month of fluid milk products from all sources, except receipts from pool plants, receipts from regulated plants under other Federal orders if such receipts were subject to an administration expense assessment under the other order, and receipts of exempt milk processed at plants other than pool plants;

(b) All receipts and beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d) for the month less its disposition to pool plants and ending inventory for the month; and

(c) The quantity of pool milk distributed as route disposition in the marketing area from a handler's nonpool plant.

MISCELLANEOUS PROVISIONS

§ 1001.90 Effective time.

The provisions of this part, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated under § 1001.91.

§ 1001.91 Suspension or termination.

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

§ 1001.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 1001.93 Liquidation.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, if so directed by the Secretary, shall 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 under the provisions of this part, over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 1001.94 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, except as provided in paragraphs (b) and (c) of this section, shall terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the milk involved in the obligation, unless within the 2-year period the market administrator notifies the handler in writing that the money is due and payable. Service of the notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month 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 a cooperative association, the name of the producer or cooperative association, 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, within the 2-year period provided for in paragraph (a) of this section, may notify the handler in writing of the failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to the obligation shall not begin to run until the first day of the month following the month during which all the books and records pertaining to the 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 the handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on the payment is claimed, unless the handler, within the applicable period of time, files a petition under section 8c(15)(A) of the Act, claiming the money.

§ 1001.95 Agents.

The Secretary, by designation in writing, may 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.

§ 1001.96 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.

Order[1] Amending the Order Regulating the Handling of Milk in the Connecticut Marketing Area

§ 1015.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection

[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.

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 Connecticut 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.

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

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on June 27, 1967 and published in the FEDERAL REGISTER on July 6, 1967 (32 F.R. 9902; F.R. Doc. 67-7467) shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following revisions:

Sections 1015.16(b)(1), 1015.32(g)(5), 1015.55 (c)(1) and (e), and 1015.60 are revised.

In § 1015.9, paragraph (c)(4) is revoked and paragraph (d) is revised to read as follows:

§ 1015.9 Handler.

* * * * *

(c) * * *

(4) [Revoked]

(d) Any cooperative association with respect to producer milk transferred from the producer's farm tank to a tank truck owned and operated by or under contract to such association for delivery to a pool plant if prior to delivery the operator of the pool plant gives notice in writing to both the market administrator and the association of its intention to purchase such milk on a basis of weights and butterfat tests other than as determined from farm tank measurements and farm tank samples.

* * * * *

In § 1015.10 the introductory paragraph and paragraph (a) are revised to read as follows:

§ 1015.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and a handler during the month and who meets all the conditions specified in this section. Sections 1015.63, 1015.64, 1015.72, 1015.73, 1015.75, 1015.80, through 1015.82, and 1015.87 through 1015.89 shall not apply to a producer-handler as defined under this or any other Federal order.

(a) His only sources of milk supply (except that represented by nonfat solids used in fortification) are his own production and fluid milk products transferred from pool plants. For the purpose of this paragraph, any fluid milk products which were acquired or purchased from a nonpool plant by him, his agent, partner or other associate and which he or such other person caused to be delivered at retail or wholesale outlets (including vending machines) in any Federal marketing area without being first received at his plant shall be included in such person's nonpool source of fluid milk products.

* * * * *

In § 1015.16(b), subparagraph (1) is revised to read as follows:

§ 1015.16 Pool plants.

* * * * *

(b) * * *

(1) Any plant, other than as provided in subparagraphs (2) through (5) of this paragraph, from which is shipped during the month of July at least 15 percent, and during any month of August through November at least 25 percent, and during any month of December through June at least 15 percent, of its total receipts of milk from dairy farmers as fluid milk products, other than as diverted milk, to pool distributing plants, producer-handlers and plants to which qualifying shipments may be made under another New England Federal order, if a greater quantity of qualifying shipments are made to pool distributing plants and producer-handlers under this order than to the other plants. In the case of any plant which is eligible for qualification under subparagraph (5) of this paragraph and for which such qualification is requested the receipts at the plant from dairy farmers and the shipments therefrom to pool distributing plants for the purpose described in this subparagraph, shall include all direct deliveries of milk to pool distributing plants by producer-members of the cooperative association.

* * * * *

In § 1015.26, paragraph (c) is revoked.

§ 1015.26 Exempt milk.

* * * * *

(c) [Revoked]

In § 1015.32(g), a new subparagraph (5) is added to read as follows:

§ 1015.32 Duties.

* * * * *

(g) * * *

(5) Whenever required for purpose of assigning receipts from other Federal order plants pursuant to § 1015.55(c)(2), his estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

* * * * *

A new § 1015.35 together with a center heading is provided to read as follows:

APPLICATION OF PROVISIONS

§ 1015.35 Exempt governmental agency.

None of the provisions of this part shall apply to a governmental agency. Receipts of fluid milk products at a pool plant from such an agency shall be Class II. The disposition of fluid milk products by a pool handler to such an agency shall be Class I except that the disposition of fluid milk products in bulk to a plant operated by the University of Connecticut shall be Class II if claimed by the selling handler and supported by a certification, signed by an authorized agent of the University, that such milk was used to produce milk products other than fluid milk products or cream.

In § 1015.41, paragraphs (c) and (e)(1) are revised to read as follows:

* * * * *

§ 1015.41 Other reports of receipts and utilization.

* * * * *

(c) Each handler under § 1015.9(d) shall report to the market administrator in detail and on forms prescribed by the market administrator by the date on which reports are due under § 1015.40 after the end of each month, the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month and in the milk transferred into the tank truck at each producer's farm, and the classification of the quantities of skim milk and butterfat which are considered producer milk pursuant to § 1015.24(a)(4).

* * * * *

(e) * * *

(1) Mail or deliver to the market administrator on or before the second day (exclusive of Sundays and of legal holidays applicable at the location of the plant) following the day of each dumping not witnessed by the market administrator or his agent, a report in writing, as prescribed by the market administrator, showing the date on which the dumping was performed and the quantity dumped, such report to be signed by both the person who performed the dumping operation and the person authorized to sign reports for the handler

under § 1015.40 (if the latter person is not available to sign the report within the 2-day period, the signature of the plant manager or plant superintendent shall be substituted on the report); and

* * * * *

Section 1015.50 is revised to read as follows:

§ 1015.50 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to § 1015.40, or is producer milk pursuant to § 1015.24(a)(4) and required to be reported pursuant to § 1015.41(c), shall be classified pursuant to the provisions of §§ 1015.51 to 1015.53. Bulk milk which a cooperative association causes to be delivered under § 1015.9(c)(3) to the pool plant of another cooperative association shall be considered as if it were transferred between two pool plants located in the same zone location. When nonfat milk solids derived from nonfat dry milk, condensed skim milk or any other product condensed from milk or skim milk are utilized or unaccounted for by the handler, the total pounds of skim milk classified shall reflect a volume equivalent to the skim milk used to produce such nonfat milk solids, except that if the solids are utilized to fortify fluid milk products or cream, the actual weight of any such products shall be included in classifying the total product weight.

In § 1015.52, paragraphs (g)(2), (g)(3) and, (i) are revised, paragraph (i) is redesignated as paragraph (j), and a new paragraph (i) is added. Paragraphs (g)(2), (g)(3), (i), and (j) are to read as follows:

§ 1015.52 Class II milk.

* * * * *

(g) * * *

(2) Plus 1.5 percent of:

(i) Producer milk received from a handler under § 1015.9(d);

(ii) Milk received at the pool plant of a cooperative association from another cooperative association as specified in § 1015.9(c)(3) unless the association that received the milk at its pool plant notifies the market administrator in writing by the date reports are due under § 1015.40 that it is purchasing the milk on the basis of farm tank measurements and butterfat tests determined from farm tank samples in which case the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of:

(i) Producer milk received by a handler under § 1015.9(c)(3) if the association operating the pool plant where the milk is delivered has not notified the market administrator in writing by the date reports are due under § 1015.40 that it is purchasing the milk on the basis of farm tank measurements and butterfat tests determined from farm tank samples;

(ii) Milk transferred by a cooperative association in its capacity as a handler pursuant to § 1015.9(d) from a producer's farm tank into a tank truck.

* * * * *

(i) Contained in bulk fluid milk products transferred or diverted to the plant of an exempt governmental agency if the conditions of § 1015.35 are met.

(j) Contained in fluid milk products transferred or diverted from a pool plant to another plant other than the plant of a producer-handler under any Federal order or the plant of an exempt governmental agency if the conditions of § 1015.53 are met.

In § 1015.55, the introductory paragraph, and paragraphs (b)(3), (c), and (e) are revised to read as follows:

§ 1015.55 Assignment to classes of skim milk and butterfat received.

The total quantity of skim milk and butterfat received during the month at each pool plant and by handlers specified in § 1015.9(c) and required to be reported under § 1015.40 (including those quantities in inventory at the beginning of the month) and in producer milk pursuant to § 1015.24(a)(4) required to be reported pursuant to § 1015.41(c), shall be assigned separately, in the manner and sequence provided below, to the respective quantities of skim milk and butterfat classified in each class under §§ 1015.50 through 1015.53.

* * * * *

(b) * * *

(3) Fluid milk products from producer-handlers under any Federal order, from exempt governmental agencies, or from exempt distributing plants under any New England Federal order in sequence beginning with the source most distant from Hartford according to its zone location;

* * * * *

(c) For pool distributing plants:

(1) To the remaining pounds in Class II milk, assign the pounds of bulk fluid milk products received during the month from regulated plants or handlers under another Federal order on which a Class II use was claimed by both the shipper and the operator of the receiving plant; and

(2) To the remaining pounds in each class, assign in the manner provided in subdivisions (i) and (ii) of this subparagraph any remaining receipts of bulk fluid milk products from each regulated plant under another Federal order, to the extent that such receipts are not offset by transfers of bulk fluid milk products to the same plants, if such receipts are classified and priced under the other order as Class I milk or are subject to such classification and pricing or the equivalent thereof, if assigned to Class I milk under this order. Should the quantity to be assigned to either class exceed the respective quantity remaining in that class at the plant of receipt, the respective quantity remaining in that class shall be increased to the quantity to be assigned and the respective quantity remaining in the other class shall be decreased by an identical quantity. If such an adjustment is required at the receiving plant, an offsetting adjustment shall be made to the respective remaining quantities in each class at the handler's other pool plants, in sequence beginning with the plant nearest Hartford.

(i) Assign the quantities in such receipts to Class I milk and Class II milk in proportion to the estimated percentages of skim milk and butterfat, respectively, in each class in producer milk of all handlers for the month as announced under § 1015.32(g)(5), or in proportion to the respective remaining pounds in each class at all of the handler's pool plants, whichever procedure results in the greater combined quantity of skim milk and of butterfat in such receipts being assigned to Class II milk.

(ii) The quantities assigned to Class II milk under this paragraph shall not exceed the respective quantities of skim milk and of butterfat in Class II milk remaining at all of the handler's pool plants. Any remaining receipts shall be assigned to Class I milk.

* * * * *

(e) For pool supply plants, assign to the remaining pounds in each class, beginning with Class II milk, the pounds of bulk fluid milk products received during the month from regulated plants or handlers under other Federal orders which were not previously assigned.

* * * * *

Section 1015.60 is revised to read as follows:

§ 1015.60 Class I price.

The Class I price per hundredweight of milk containing 3.5 percent butterfat, at plants in the nearby plant zone under § 1015.62 shall be the amount computed for each month as specified in this section. The latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday the latest figures available on the next succeeding workday shall be used.

(a) Compute an economic index, with the year 1958 as the base period, as follows:

(1) Calculate a U.S. wholesale commodity price index by dividing the monthly wholesale price index for all commodities (as reported by the Bureau of Labor Statistics, U.S. Department of Labor, with the years 1957–59 as the base period) by 1.0025.

(2) Calculate a New England consumer income index by multiplying the current annual rate of per capita disposable personal income in the United States (based upon the quarterly figure released by the U.S. Department of Commerce or the Council of Economic Advisers to the President) by the New England adjustment percentage and dividing the result by 20.50. The New England adjustment percentage shall be the current percentage relationship of per capita personal income in New England to per capita personal income in the United States (using data on per capita personal income by States and regions as published by the

United States Department of Commerce).

(3) Calculate a New England dairy ration index by dividing the monthly average price paid by farmers in the New England region for 100 pounds of mixed dairy feed containing less than 29 percent protein (as reported by the U.S. Department of Agriculture) by 0.03884.

(4) Calculate a New England farm wage rate index by dividing the weighted average farm wage rate for the New England region by 1.9833. The weighted average farm wage rate for the New England region shall be the average of the farm wage rates for the New England region (as reported by the U.S. Department of Agriculture) weighted by the factors indicated in the following table.

Rate	*Weighting factor*
Per month with board and room	1.00
Per month with house	1.00
Per week with board and room	4.33
Per week without board or room	4.33
Per day without board or room	26.00

(5) Calculate a New England grain-labor cost index by multiplying the New England dairy ration index by 0.6 and the New England farm wage rate index by 0.4, and combining the two results.

(6) The economic index shall be the result of dividing by seven the sum of three times the U.S. wholesale commodity price index; the New England consumer income index, and three times the New England grain-labor cost index.

(b) Compute an economic index price as follows:

(1) Multiply the economic index by $0.0557, expressing the result to the nearest mill.

(2) Divide the Class I-A price for the month computed under the New York-New Jersey Federal order, applicable to milk containing 3.5 percent butterfat received at plants located in the 201-210-mile freight zone, by the utilization adjustment percentage which entered into the computation of that price, expressing the result to the nearest mill.

(3) The economic index price shall be the price computed in subparagraph (1) of this paragraph, except that its deviation from the result obtained in subparagraph (2) of this paragraph shall be limited to $0.09.

(c) Compute a supply-demand adjustment factor (using quantities announced in the statistical reports of the respective market administrators for the New England Federal orders for the second, third, and fourth months preceding the month for which the price is being computed but excluding receipts and sales of plants which become regulated on the basis of their sales in the Massachusetts-Rhode Island area extension) as follows:

(1) For each of the three months, determine the total Class I producer milk and the total producer milk for the New England Federal order markets by combining the respective totals for the individual markets.

(2) For each of the three months, divide the total Class I producer milk for the New England Federal order markets by the base Class I percentage factor for the same month as determined under § 1015.65(a). The result shall be the New England base supply for that month.

(3) For each of the three months, express the total producer milk for the New England Federal order market as a percentage of the New England base supply for the same month. The simple average of the three resulting percentages shall be the percentage of base supply.

(4) The supply-demand adjustment factor shall be the figure in the following table opposite the bracket within which the percentage of base supply falls. When the percentage of base supply falls in an interval between brackets, the supply-demand adjustment factor shall be the figure shown for the next higher bracket if the factor for the previous month was based on a bracket higher than such interval, and shall be the figure for the next lower bracket if the factor for the previous month was based on a bracket lower than such interval.

Percentage of base supply: [1]	*Supply-demand adjustment factor*
90.5–91.5	1.06
92.0–93.0	1.05
93.5–94.5	1.04
95.0–96.0	1.03
96.5–97.5	1.02
98.0–99.0	1.01
99.5–100.5	1.00
101.0–102.0	.99
102.5–103.5	.98
104.0–105.0	.97
105.5–106.5	.96
107.0–108.0	.95
108.5–109.5	.94

[1] If the percentage of base supply calculated according to subparagraph (3) of this paragraph falls outside the extremes shown in this column, the supply-demand adjustment factor shall be determined by extending the table at the indicated rate of extension.

(d) The Class I price shall be the result, rounded to the nearest full cent, of the economic index price determined under paragraph (b) of this section, multiplied by the supply-demand adjustment factor determined under paragraph (c) of this section, plus 40 cents, except that from the effective date of this amendment the Class I price each month shall be $6.79 through April 1968.

In § 1015.62, paragraph (d) is revised to read as follows:

§ 1015.62 Plant zone price differentials.

* * * * *

(d) The zone price differentials for each plant shall be those applicable to its zone location as shown in the following table:

PLANT ZONE PRICE DIFFERENTIALS

Distance to Hartford (miles)	Plant location zone	Class I and uniform price differentials (cents per hundredweight)	Class II price differentials (cents per hundredweight)
Various	Nearby plant	0.0	0.0
51 to 60	6	−19.0	−1.4
61 to 70	7	−20.4	−1.7
71 to 80	8	−21.8	−2.0
81 to 90	9	−23.2	−2.6
91 to 100	10	−24.6	−2.8
101 to 110	11	−26.0	−2.9
111 to 120	12	−27.4	−3.2
121 to 130	13	−28.8	−3.4
131 to 140	14	−30.2	−3.7
141 to 150	15	−31.6	−4.2
151 to 160	16	−33.0	−4.5
161 to 170	17	−34.4	−4.6
171 to 180	18	−35.8	−5.2
181 to 190	19	−37.2	−5.4
191 to 200	20	−38.6	−5.7
201 to 210	21	−40.0	−5.8
211 to 220	22	−41.4	−6.4
221 to 230	23	−42.8	−6.5
231 to 240	24	−44.2	−6.7
241 to 250	25	−45.6	−6.7
251 to 260	26	−47.0	−7.0
261 to 270	27	−48.4	−7.1
271 to 280	28	−49.8	−7.3
281 to 290	29	−51.2	−7.4
291 to 300	30	−52.6	−7.6
301 to 310	31	−54.0	−8.1
311 to 320	32	−55.4	−8.2
321 to 330	33	−56.8	−8.3
331 to 340	34	−58.2	−8.6
341 to 350	35	−59.6	−8.6
351 to 360	36	−61.0	−8.8
361 to 370	37	−62.4	−8.[illegible]
371 to 380	38	−63.8	−9.1
381 to 390	39	−65.2	−9.2
391 to 400	40	−66.6	−9.3
401 and over	41 and over	(1)	−9.3

[1] Class I and uniform price differentials applicable to plants located more than 400 miles from Hartford shall be obtained by extending the table at the rate of 1.4 cents for each additional 10 miles, except that in no event shall the Class I or uniform price at any zone be less than the Class II price for the month for plants in such zone.

* * * * *

In § 1015.63, the introductory paragraph and paragraph (c) are revised to read as follows:

§ 1015.63 Value of each handler's fluid milk products.

For each month, the market administrator shall compute the value of fluid milk products for each handler under § 1015.9(a), (b), (c), and (d) except a producer-handler under any Federal order. The prices used shall be those for the zone location of the plant for which the value is being computed or at which it has been considered that a handler under § 1015.9(c) or (d) received producer milk, except that under paragraphs (a)(2), (b)(2), and (f)(2) of this section the prices used shall be those applicable at the zone locations of the plants from which the fluid milk products were received, and under paragraph (c) of this section, the prices which are specified therein shall be used.

* * * * *

(c) Compute a charge on the handler's beginning inventory as follows:

(1) Multiply the difference between the Class II price for the preceding month and the Class I price for the cur-

rent month applicable at the nearest plant location from which an equivalent quantity of skim milk and butterfat, respectively, was allocated to Class II milk in the preceding month, by the hundredweight of skim milk and butterfat, respectively, assigned to Class I milk under § 1015.55(b)(7) for the month which is in excess of the hundredweight of skim milk and butterfat, respectively, allocated to Class II milk under § 1015.55 (e) and (i) during the preceding month and classified and priced as Class I milk or the equivalent thereof under the provisions of any Federal order; and

(2) Multiply the hundredweight of skim milk and butterfat in milk which is in transit to a pool plant at the beginning of the month from a cooperative association in its capacity as a handler under § 1015.9(d), by the difference between the Class II price for the preceding month and the uniform price for the current month applicable at the location at which such milk was priced during the preceding month.

* * * * *

In § 1015.64, paragraph (a) is revised to read as follows:

§ 1015.64 Basic uniform price.

(a) Combine into one total the value of fluid milk products computed under § 1015.63, excluding any charge under § 1015.63(c)(2), for each handler who made the reports prescribed in §§ 1015.40 and 1015.41(c) for the month and who was not in default of payments under § 1015.81 for the preceding month.

* * * * *

In § 1015.73, paragraph (b) is revised to read as follows:

§ 1015.73 Statements to producers.

* * * * *

(b) The total pounds and average butterfat test of milk received from the producer or from the cooperative association in its capacity as a handler under § 1015.9(d) except that the butterfat test shall not be required on statements accompanying payment for the first 15 days of the month;

* * * * *

Section 1015.74 is revised to read as follows:

§ 1015.74 Adjustment of payments to producers and cooperative associations.

Whenever the market administrator's verification of a handler's payments to producers or cooperative associations discloses payment of an amount less than is required by § 1015.70 the handler shall make payment of the balance due the producer or cooperative association not later than the date for making payment under § 1015.70 for the month in which the handler is notified by the market administrator of the deficiency.

Section 1015.80 is revised to read as follows:

§ 1015.80 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund." He shall deposit all amounts received from handlers under §§ 1015.81, 1015.88, and 1015.89 into the fund. He shall pay all amounts due handlers under §§ 1015.82 and 1015.88 from the fund, subject to his right to offset a payment due to a handler from the producer-settlement fund against any payment due from the handler to the fund. All amounts subtracted under § 1015.64 (c) inclusive of interest earned thereon, shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1015.64(d). The market administrator shall render a statement to each handler who made the reports prescribed in § 1015.40 or § 1015.41(c), by the 16th day of the month showing the amount due to or from the producer-settlement fund computed in accordance with §§ 1015.63, 1015.81, and 1015.82.

In § 1015.87, paragraph (b) is revised to read as follows:

§ 1015.87 Payment of administration expense.

* * * * *

(b) The payment shall also apply to the quantity of pool milk distributed as route disposition in the marketing area from a handler's nonpool plant, to the quantity of producer milk for which a cooperative association is the handler under § 1015.9(c), and to the quantity of producer milk for which the cooperative association is the handler under § 1015.9 (d), except that disposed of to pool plants or in ending inventory for the month.

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