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## TITLE 7—AGRICULTURE

### Chapter VII—Production and Marketing Administration (Agricultural Adjustment), Department of Agriculture

[1023 (Cotton-54)-2]

#### PART 722—COTTON

#### MARKETING QUOTA REGULATIONS RELATING TO APPORTIONMENT OF THE NATIONAL ACREAGE ALLOTMENT FOR THE 1954 CROP OF UPLAND COTTON TO STATES, COUNTIES, AND FARMS

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**AUTHORITY:** §§ 722.511 to 722.530 issued under sec. 375, 52 Stat. 66; 7 U. S. C. 1375. Interpret or apply secs. 301, 342-347, 361-368, 373-374, 388, 52 Stat. 38, as amended; 7 U. S. C. 1301, 1342-1347, 1361-1368, 1373-1374, 1388.

##### GENERAL

§ 722.511 *Basis and purpose.* (a) The regulations contained in §§ 722.511 to 722.530 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of State, county, and farm acreage allotments for the 1954 crop of upland cotton. The latest available statistics of the Federal Government have been used in making the determinations required to be made in connection with establishing State and county acreage allotments, and such statistics will be used in making the other determinations required to be made in connection with §§ 722.511 to 722.530. Prior to preparing the regulations in §§ 722.511 to 722.530, public notice was given (18 F. R. 6661) in accordance with section 4 of the Administrative Procedure Act (5 U. S. C. 1003) of proposed regulations being considered for issuance. The data, views, and recommendations which were submitted in response to such notice have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended.

(b) In order that the State and county Production and Marketing Administration committees may establish farm acreage allotments as early as possible prior to the cotton referendum to be held not later than December 15, 1953, it is essential that the regulations in §§ 722.511 to 722.530 be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the 30-day effective date provision of the Administrative Procedure Act is impracticable and contrary to the public interest, and such regulations shall be effective upon filing of this document with the Director, Division of the Federal Register.

§ 722.512 *Definitions.* As used in §§ 722.511 to 722.530 and in all forms and documents in connection therewith,

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unless the context or subject matter otherwise requires, the following terms shall have the following meanings and the masculine shall include the feminine and neuter genders and the singular shall include the plural number:

(a) "Act" means the Agricultural Adjustment Act of 1938 and any amendments thereto heretofore or hereafter made.

(b) "Secretary" means the Secretary, or Acting Secretary, of Agriculture of the United States.

(c) "Assistant Administrator" means the Assistant Administrator for Production, or Acting Assistant Administrator for Production, of the Production and Marketing Administration of the United States Department of Agriculture.

(d) "Director" means the Director, or Acting Director, of the Cotton Branch, Production and Marketing Administration, United States Department of Agriculture.

(e) "Committees"

(1) "Community committee" means the persons elected within a community as the community committee pursuant to the Secretary's regulations governing the selection and functions of the Production and Marketing Administration

county and community committees (14 F. R. 5916)

(2) "County committee" means the persons elected within a county as the county committee pursuant to the Secretary's regulations governing the selection and functions of the Production and Marketing Administration county and community committees (14 F. R. 5916)

(3) "State committee" means the persons designated by the Secretary as the State committee of the Production and Marketing Administration.

(4) "Review committee" means the review committee appointed by the Secretary pursuant to section 363 of the act.

(f) "Person" means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity, or State or agency thereof. The term "person" shall include two or more persons having a joint or common interest.

(g) "Owner" or "landlord" means a person who owns farm land and rents such land to another person or who operates such land.

(h) "Cash tenant" "standing-rent tenant" or "fixed-rent tenant" means a person who rents land from another for a fixed amount of cash or a commodity to be paid as rent.

(i) "Share tenant" means a person other than a sharecropper who rents land from another person and pays as rent a share of the crops or the proceeds thereof.

(j) "Sharecropper" means a person who works a farm in whole or in part under the general supervision of the operator and is entitled to receive for his labor a share of the crops produced thereon or the proceeds thereof.

(k) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(l) "Farm" means all adjacent or nearby farm or range land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm or range land which the county committee, in accordance with instructions issued by the Assistant Administrator, determines is operated by the same person as part of the same unit in producing range livestock or with respect to the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other lands; and

(2) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

A farm shall be regarded as located in the county or administrative area, as the case may be, in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county or administrative area, as the case may be, in which the major portion of the farm is located.

(m) "Farm acreage allotment" means a cotton acreage allotment established for a farm under the regulations in this subpart.

(n) "Upland cotton" (herein referred to as "cotton") means any cotton other than extra long staple cotton.

(o) "Extra long staple cotton" means the kinds of cotton described in section 347 (a) of the act and in the marketing quota regulations relating to apportionment of the national acreage allotment for the 1954 crop of extra long staple cotton to States, counties, and farms.

(p) "State and county code number" means the applicable number assigned by the Production and Marketing Administration to each State and county for the purpose of identification.

(q) "Serial number of the farm" or "farm serial number" means the serial number assigned to a farm by the county committee.

(r) "Old cotton farm" means a farm having an acreage planted to cotton in any one or more of the years 1951, 1952, and 1953.

(s) "New cotton farm" means a farm on which cotton is to be planted in 1954 but on which there was no acreage planted to cotton in any of the years 1951, 1952, or 1953.

(t) "Normal yield" means the average yield of lint cotton per acre for the farm, adjusted for abnormal weather conditions, during the five calendar years 1947, 1948, 1950, 1951, and 1952. If for any such year the data are not available or there is no actual yield, then the normal yield for the farm shall be appraised by the county committee in accordance with instructions issued by the Assistant Administrator, taking into consideration abnormal weather conditions, the normal yield, if any, for the county, and the yield in years for which data are available.

(u) "Normal production" of any number of acres means the normal yield per acre of lint cotton for the farm multiplied by such number of acres.

(v) "Actual yield" means the pounds of lint cotton per acre determined by dividing the number of pounds of lint cotton produced on the farm in 1954 by the acreage planted to cotton on the farm in 1954.

(w) "Actual production" of any number of acres means the actual yield of lint cotton per acre for the farm multiplied by such number of acres.

(x) "Producer" means a person who as landlord (other than the landlord of a standing-rent tenant, fixed-rent tenant, or cash tenant) cash tenant, standing-rent tenant, fixed-rent tenant, share tenant, or sharecropper is entitled to all or a share of the 1954 crop of cotton or of the proceeds thereof.

(y) "Acreage planted to cotton"

(1) State. The acreages of cotton to be used in establishing State acreage allotments are as follows:

(i) For 1947, 1948, 1951, and 1952. The official planted acreages for the years 1947, 1948, 1951, and 1952 (acreage in cultivation on July 1 of each year plus the estimated acreage planted but abandoned prior to July 1), as determined by the Bureau of Agricultural Economics of the United States Department of Agriculture, plus, for 1947, the total acreage of war crop and veteran credits determined and used under those provisions of the Regulations Pertaining to Acreage

Allotments and Marketing Quotas for the 1950 Crop of Cotton (14 F. R. 7441) which implemented Public Law 12, 79th Congress, and section 344 (1) of the act.

(ii) For 1950. The measured acreages for all farms in the State, as determined by the county committees for purposes of the 1950 cotton marketing quota program, and adjusted according to the provisions of subsections (f) (4) and (5) (g) (3) and (i) of section 344 of the act.

(2) County. The acreages of cotton to be used in establishing county acreage allotments are as follows:

(i) For 1947 and 1948. The official acreage in cultivation on July 1 each year as determined by the Bureau of Agricultural Economics of the United States Department of Agriculture, plus, for 1947, the total acreage of war crop and veteran credits determined and used under those provisions of the Regulations Pertaining to Acreage Allotments and Marketing Quotas for the 1950 Crop of Cotton (14 F. R. 7441) which implemented Public Law 12, 79th Congress, and section 344 (1) of the act.

(ii) For 1950. The measured acreages for all farms in the county, as determined by the county committee for purposes of the 1950 cotton marketing quota program, and adjusted according to the provisions of subsections (f) (4) and (5) (g) (3) and (i) of section 344 of the act.

(iii) For 1951 and 1952. The official planted acreage (acreage in cultivation on July 1 of each year plus the estimated acreage planted but abandoned prior to July 1) as determined by the Bureau of Agricultural Economics of the United States Department of Agriculture.

(3) Farm. For purposes of establishing farm acreage allotments for the 1954 crop of cotton, the acreage planted to cotton on a farm means the acreage of land planted to cotton for the years 1951 to 1953, inclusive, which shall be determined as follows:

(i) For 1951 and 1952. The acreage measured by the county committee or reported to the county committee for the farm, with such adjustments in the reported acreages as are necessary under instructions issued by the Assistant Administrator. The sum of the reported acreages as adjusted by the county committee, and the measured acreages shall conform with the official planted acreages of the Bureau of Agricultural Economics, United States Department of Agriculture, for the respective years to the extent required under instructions issued by the Assistant Administrator.

(ii) For 1953. The acreage measured by the county committee in accordance with instructions issued by the Assistant Administrator.

(4) Exclusion of acreages planted to extra long staple cotton. Acreage devoted to the production of American-Egyptian, Sea Island, and Sealand cotton during the period of years 1947 to 1953, inclusive, shall not be included in the acreage planted to cotton, as determined under subparagraphs (1), (2), and (3) of this paragraph, for the purposes of determining acreage allotments for the 1954 crop of cotton.

(z) "Abnormal weather conditions" means weather conditions (including conditions directly resulting therefrom) adversely affecting the planting of cotton, which conditions must have been of sufficient duration and intensity to prevent the seeding of land to cotton and must have continued until the end of the planting season for the area. In apportioning the State acreage allotment to counties, adjustments in county acreages of cotton for abnormal weather conditions for applicable years are made on the basis of recommendations by the State committees. Any such adjustment in county cotton acreages is the amount established by reference to available information and data as the net reduction of planted acreage in the county attributable solely to abnormal weather conditions. Such adjustments for abnormal weather conditions take into consideration failure to seed cotton because of abnormal weather conditions. Also, for the years 1947 and 1948 abandonment of cotton prior to July 1 in excess of normal abandonment by that date because of abnormal weather conditions is taken into consideration in determining adjustments, if any, in county acreages of cotton for these years.

(aa) "Cropland" means the land which in 1953 was tilled or was in regular rotation as determined by the county committee in accordance with instructions issued by the State committee, excluding any land which constitutes, or will constitute, if such tillage is continued, a wind-erosion hazard to the community and also excluding bearing orchards and vineyards (except the acreage of cropland therein) and plowable non-crop open pasture.

§ 722.513 *Issuance of forms and instructions.* The Director shall cause to be prepared such forms and instructions as are necessary for carrying out these regulations. The forms shall be issued by the Director, with the approval of the Assistant Administrator, and the instructions shall be issued by the Assistant Administrator. Copies of such forms and instructions shall be furnished free to persons needing them upon request made to the office of the State or county committee or the Director.

§ 722.514 *Extent of calculations and rule of fractions.* The acreage planted to cotton on farms and farm acreage allotments shall be computed to three places beyond the decimal point and rounded to tenths of acres. Fractions of fifty-one one-thousandths of an acre or more shall be rounded upward, and fractions of less than fifty one-thousandths of an acre shall be dropped. For example, 10.051 would be 10.1 and 10.050 would be 10.0.

#### STATE AND COUNTY ACREAGE ALLOTMENTS

§ 722.515 *Apportionment of national acreage allotment among States.* The national acreage allotment proclaimed for the 1954 crop of cotton (18 F. R. 6556), less the acreage required pursuant to section 344 (k) of the act to provide any State an allotment not less than the smaller of 4,000 acres or the highest acreage planted to cotton in any of the years 1951, 1952, or 1953, is apportioned among the other States on

the basis of the average acreage planted to cotton in each such State for the years 1947, 1948, 1950, 1951 and 1952. It has been determined that, on the basis of the latest available data and information, no adjustments in State cotton acreages for abnormal weather conditions are required for any of the aforementioned years. The acreage allotted to a State pursuant to the provisions of this section is herein referred to as the "State acreage allotment." The State acreage allotment for each State for the 1954 crop of cotton is as follows:

State:	State acreage allotments
Alabama .....	1,139,121
Arizona .....	288,223
Arkansas .....	1,562,684
California .....	697,806
Florida .....	33,122
Georgia .....	1,005,862
Illinois .....	14,000
Kansas .....	180
Kentucky .....	9,136
Louisiana .....	634,906
Mississippi .....	1,759,641
Missouri .....	391,396
Nevada .....	12,289
New Mexico .....	167,243
North Carolina .....	528,638
Oklahoma .....	929,202
South Carolina .....	786,006
Tennessee .....	575,891
Texas .....	7,376,858
Virginia .....	18,344
United States total .....	17,910,448

<sup>1</sup> Minimum State acreage allotments determined in accordance with section 344 (k) of the Agricultural Adjustment Act of 1938, as amended.

§ 722.516 *Apportionment of State acreage allotment among counties—(a) Establishment of State acreage reserves.* The State committee shall set aside a total State acreage reserve of 10 percent of the State acreage allotment (15 percent in the case of Oklahoma) unless, on the basis of the needs of the State as determined under paragraph (c) of this section, the State committee recommends a smaller acreage reserve and the Administrator of the Production and Marketing Administration approves such recommendation.

(b) *Computed county acreage allotments.* The State acreage allotment for the 1954 crop of cotton, less the State acreage reserve established pursuant to paragraph (a) of this section, is apportioned to counties (parishes in Louisiana) on the basis of the average acreage planted to cotton in each county in 1947, 1948, 1950, 1951, and 1952 (herein referred to as the "base years") with adjustments for abnormal weather conditions during such years. The acreage allotted to a county (or parish) pursuant to the provisions of this paragraph is herein referred to as the "computed county acreage allotment."

(c) *State acreage reserve.* The State acreage reserve established for the purposes set forth in subparagraphs (1) through (4) of this paragraph shall be used as provided in such subparagraphs and in accordance with instructions issued by the Assistant Administrator.

(1) *To adjust computed county acreage allotments for trends in the acreage of cotton.* The State committee shall,

if necessary, use a part of the State acreage reserve to adjust the computed county acreage allotments for trends in the acreage planted to cotton in the counties during recent years (the period of years may include the year 1953 but shall not include the year 1949) Any such adjustments shall be determined by use of a formula, if needed, applied uniformly to each county in the State.

(2) *To adjust computed county acreage allotments for counties adversely affected by abnormal conditions affecting plantings of cotton.* The State committee shall, if necessary, use a part of the State acreage reserve to adjust the computed county acreage allotments for abnormal conditions adversely affecting plantings in the counties during the base years. The State committee shall examine the acreage planted to cotton for each of the base years to determine whether the acreage planted may have been adversely affected by abnormal conditions. In determining the needs for adjustments for abnormal conditions adversely affecting plantings, the State committee shall take into account (i) abnormal weather conditions adversely affecting plantings during any of the base years; (ii) conditions in counties in which a number of farms are being returned to cotton production or are increasing the acreage in cotton after having been out of production or having been on a reduced level of cotton production because such farms were used to a larger extent than normal in connection with air bases, defense plants, and other wartime activities; (iii) abnormal reduction in planted cotton acreage because of an unusual movement of labor from farms in the area or county to war industries or into the armed forces and its return, as compared with such movements in other counties; and (iv) any other abnormal conditions which adversely affected plantings in the county to a greater extent as compared with other counties.

(3) *To make adjustments in acreage allotments for small farms.* The State committee shall determine the acreage required from the State acreage reserve to supplement that part of the county acreage reserve established as provided for in subparagraphs (1) and (2) of § 722.517 (d) to adjust indicated farm acreage allotments for old cotton farms established under § 722.517 (c) at 15 acres or less. The acreage made available to any county under this subparagraph shall be used by the county committee only for adjustments in small farm allotments. The acreage reserved for small farms may also be used (i) to establish allotments for any small farm which is an old cotton farm but for which an allotment was not established at the time allotments were established for old cotton farms in the county because of oversight on the part of the county committee or because the county committee had no information or data with respect to acreage planted to cotton on the farm in 1951, 1952, or 1953, and (ii) to adjust allotments for small farms where the farm is reconstituted for 1954 due to division of the farm as constituted in 1953 or a combination of a part or all of the 1953 farm with other land.

(4) *To establish 1954 acreage allotments for new cotton farms.* Where the State committee determines that the needs for acreage to establish acreage allotments for new cotton farms are generally uniform throughout the State, the State committee shall determine whether all the acreage required to establish acreage allotments for new cotton farms shall be provided from the State acreage reserve or the county acreage reserve, or from both such reserves. In determining the source of acreage for new cotton farms the State committee shall take into consideration the acreage requirements determined for such farms from the county surveys, if available, as provided for in § 722.517 (d) (3). In States where new areas will be brought into cotton production in 1954 or where it is determined by the State committee that the entire county acreage reserve for any county is needed for adjustments pursuant to subparagraphs (1) and (2) of § 722.517 (d) the State committee shall consider establishing an acreage from the State acreage reserve to supplement the acreage set aside by the county committee, if any, from the county acreage reserve for establishing acreage allotments for new cotton farms. In determining the estimated acreage to be set aside for establishing fair and reasonable acreage allotments for new cotton farms on the basis of the factors set forth in § 722.517 (d) (3) the State committee shall take into consideration the experience of State and county committees in establishing acreage allotments for new cotton farms under previous marketing quota programs and any other available information. The acreage made available to any county under this subparagraph shall be used by the county committee only for new cotton farms.

(d) *Availability of data for inspection.* The following shall be on file and shall be available in the office of the State committee for examination by any interested cotton producer: (1) The amount of the State acreage reserve; (2) the formula, if any, and data developed and used under subparagraphs (1) and (2) of paragraph (c) of this section; and (3) the total acreage set aside from the State acreage reserve for the purposes set forth in subparagraphs (3) and (4) of paragraph (c) of this section.

(e) *County acreage allotment.* The county acreage allotment shall be the sum of (1) the computed county acreage allotment determined under paragraph (b) of this section, and (2) the acreages from the State acreage reserve which are added to the computed county acreage allotment under subparagraphs (1) and (2) of paragraph (c) of this section. This paragraph will be amended at a later date to include the county acreage allotment established for each county.

(f) *Administrative areas.* If the county committee with the approval of the State committee, or if the State committee, determines with respect to a county that, because of the difference in types, kinds, and productivity of the soil or other conditions, different areas of the county should be treated separately in order to prevent discrimination, each such area shall, in accordance with in-

structions issued by the Assistant Administrator, be designated as an administrative area and, insofar as practicable, each such area shall be treated as a county in determining the acreage allotment for the area and in establishing farm acreage allotments under § 722.517.

#### ESTABLISHMENT OF FARM ACREAGE ALLOTMENTS

§ 722.517 *Apportionment of county acreage allotment—*(a) *Acreage set aside from county acreage allotment.* The county committee shall set aside an acreage from the county acreage allotment which it estimates will be adequate (1) for establishing allotments for old cotton farms for which allotments are not established at the time allotments are originally established for old cotton farms in the county because of oversight on the part of the county committee or because the county committee had no information or data with respect to acreage planted to cotton on the farm in 1951, 1952, or 1953, (2) for correction by the county committee of errors in farm acreage allotments, and (3) for providing the additional allotment required for farms which are reconstituted for 1954 as provided in paragraphs (f) and (g) of this section.

(b) *Determination of county acreage reserve.* The county committee shall establish a county acreage reserve of not in excess of 15 percent of the county acreage allotment which shall be used to adjust indicated farm acreage allotments for old cotton farms determined under paragraph (c) of this section and to establish acreage allotments for new cotton farms under paragraph (d) (3) of this section. The county acreage reserve shall not be less than 13 percent of the county acreage allotment less the acreage set aside pursuant to paragraph (a) of this section) unless the county committee recommends a smaller acreage reserve and the State committee gives its approval in accordance with instructions issued by the Assistant Administrator. Any approval of a smaller acreage reserve shall be based upon a showing by the county committee that the recommended acreage is adequate, on the basis of the factors set forth in paragraph (d) of this section, to make necessary adjustments in indicated allotments for old cotton farms and to establish allotments for new cotton farms.

(c) *Indicated acreage allotments for old cotton farms.* The county acreage allotment, less the acreage set aside and reserved pursuant to paragraphs (a) and (b) of this section, shall be used to determine indicated allotments for old cotton farms as follows:

(1) *Indicated minimum acreage allotments for old cotton farms with highest cotton acreage less than 5 acres.* The indicated minimum acreage allotment for each old cotton farm on which the highest acreage planted to cotton in any of the years 1951, 1952, and 1953 was less than 5 acres, shall be equal to such highest acreage.

(2) *Pro rata reduction of indicated acreage allotments for old cotton farms.* If the sum of (1) the indicated acreage allotments determined under subpara-

graph (1) of this paragraph and (ii) the acreage determined by multiplying the number of old cotton farms with 5 acres or more planted to cotton in any of the years 1951, 1952, and 1953 by 5, exceeds the county acreage allotment, less the acreages set aside and reserved pursuant to paragraphs (a) and (b) of this section, an indicated acreage allotment of 5 acres shall be established for each old cotton farm having 5 acres or more planted to cotton in any of the years 1951, 1952, and 1953. Where indicated acreage allotments of 5 acres are established under this subparagraph, each indicated acreage allotment determined under this subparagraph and under subparagraph (1) of this paragraph for each old cotton farm shall be reduced pro rata so that the sum of the indicated acreage allotments for all old cotton farms shall not exceed the county acreage allotment, less the acreages set aside and reserved pursuant to paragraphs (a) and (b) of this section.

(3) *Indicated acreage allotments for old cotton farms with highest cotton acreage of 5 acres or more in counties where subparagraph (2) of this paragraph is not applicable—*(i) *Determination of adjusted cropland.* If subparagraph (2) of this paragraph is not applicable in a county, the county committee shall, in accordance with instructions issued by the Assistant Administrator, determine an adjusted cropland acreage for each old cotton farm on which the highest acreage planted to cotton in any of the years 1951, 1952, and 1953 was 5 acres or more, by subtracting from the acreage of land on the farm, which in 1953 was tilled annually or in regular rotation, the sum of the following acreages:

(a) The 1953 acreage of sugarcane for sugar or for syrup and sugar beets for sugar;

(b) The 1953 acreage of tobacco for market (or the 1953 farm acreage allotment, if any, for the applicable type of tobacco if the 1953 acreage has not been determined)

(c) The 1953 acreage of peanuts picked and threshed as determined by the county committee;

(d) The acreage of wheat for harvest in 1954 for market or for feeding to livestock for market. If the measured wheat acreage for the farm is not available to the county committee, the deduction for wheat acreage shall be the 1954 wheat acreage allotment less the acreage which the county committee determines will be used for purposes other than for market or for feeding to livestock for market. In the counties designated in (g) of this subdivision, the deduction for wheat acreage shall be limited to the acreage by which the deduction which otherwise would be made under this (d) exceeds the acreage deducted under (g) of this subdivision;

(e) The acreage planted to rice in 1953 for market or for feeding to livestock for market, plus the acreage of other rice land on the farm for which water is available and which is not used for the production of cotton under the rotation system for the farm;

(f) The acreage of land devoted in 1953 primarily to orchards or vineyards,

less the acreage therein which qualifies as cropland for 1954, and

(g) In Cochise, Gila, Graham, Greenlee, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai and Yuma Counties, Arizona, and in Butte, Fresno, Glenn, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Riverside, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Stanislaus, Tehama, Tulare and Yuba Counties, California, and in Clark and Nye Counties, Nevada, and in Chaves, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Hidalgo, Luna, Otero, Sierra, Socorro and Valencia Counties, New Mexico, and in Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, and Ward Counties, Texas, the acreage of cropland in excess of that acreage for which irrigation water is normally available and adequate from available facilities for the production of irrigated crops during the cotton-producing season (seeding to maturity)

(ii) *Determination of county cropland factors.* The first county cropland factor shall be computed by dividing (a) the remainder of the county acreage allotment (less the acreages set aside and reserved pursuant to paragraphs (a) and (b) of this section) after indicated allotments have been made under subparagraph (1) of this paragraph, by (b) the total of the adjusted cropland acreages determined for old cotton farms in the county under subdivision (i) of this subparagraph. Second and additional county cropland factors shall be determined, if necessary, by dividing (1) the available county acreage allotment remaining after maximum and minimum indicated farm acreage allotments, as defined in subdivision (iii) of this subparagraph, have been established for such old cotton farms by (2) the total of the adjusted cropland acreages determined for old cotton farms in the county under subdivision (i) of this subparagraph, which under the preceding factor were not affected by either the maximum or the minimum allotment provisions. The last county cropland factor computed and applied shall be referred to herein as the "final county cropland factor"

(iii) *Indicated farm acreage allotment.* An indicated acreage allotment shall be computed for each old cotton farm under this subparagraph by multiplying the adjusted cropland for each such farm by the applicable county cropland factor except that (a) the maximum indicated acreage allotment for any such farm shall not exceed the highest acreage planted to cotton on the farm in any of the years 1951, 1952, and 1953 or (b) the minimum indicated acreage allotment for any such farm shall not be less than 5 acres.

(d) *Use of county acreage reserve.* The county acreage reserve shall be used by the county committee as follows:

(1) *Adjustments in indicated farm acreage allotments of 5 to 15 acres.* Not less than 20 percent of the county acreage reserve shall, to the extent required, be used by the county committee to adjust indicated farm acreage allotments of 5 to 15 acres, inclusive, determined under paragraph (c) of this section.

Such adjustments shall be made so as to establish acreage allotments which are fair and reasonable in relation to the acreage allotments established for similar farms in the community, taking into consideration for the farm the acreages planted to cotton in 1951, 1952, and 1953; the land, labor, and equipment available for the production of cotton; crop-rotation practices; the soil and other physical facilities affecting the production of cotton; and abnormal conditions of production. The county committee shall not make adjustments so as to cause an acreage allotment to be established for any such farm (i) in excess of the acreage which could be planted on the farm in 1954 consistent with sound crop-rotation practices followed in the community (ii) in excess of the acreage which can be farmed with the labor and equipment currently or normally available on the farm, or (iii) which would cause cotton to be planted on land unsuited to the production of cotton.

(2) *Adjustments in indicated acreage allotments for other farms.* The remainder of the acreage in the county acreage reserve, after meeting the requirements under subparagraph (1) and (3) of this paragraph, shall be used by the county committee to adjust indicated acreage allotments for farms which are less than 5 acres or more than 15 acres. Such adjustments shall be made so as to establish acreage allotments which are fair and reasonable in relation to the acreage allotments established for similar farms in the community, taking into consideration for the farm the land, labor, and equipment available for the production of cotton; crop-rotation practices; the soil and other physical facilities affecting the production of cotton; and abnormal conditions of production. The acreages planted to cotton on a farm in 1951, 1952, and 1953 shall be considered in determining the land, labor, and equipment available for the production of cotton and in connection with the crop-rotation practices followed on the farm. The county committee shall not make adjustments so as to cause an acreage allotment to be established for any such farm (i) in excess of the acreage which could be planted on the farm in 1954 consistent with sound crop-rotation practices followed in the community, (ii) in excess of the acreage which can be farmed with the labor and equipment currently or normally available on the farm, or (iii) which would cause cotton to be planted on land unsuited for the production of such crop.

(3) *Acreage allotments for new cotton farms—*(i) *Determination of county acreage needed for establishing acreage allotments for new cotton farms.* The county committee, with the assistance of the community committees, shall estimate from county office records and other available sources of information the number of new cotton farms in the county and the adjusted cropland acreage for such farms, and such estimates shall be used by the State and county committees as a basis for determining the acreage that will be required for establishing acreage allotments for new cotton farms. The acreage so determined shall not exceed 75 percent of the acreage ob-

tained by multiplying the county cropland factor, which shall be estimated where necessary, by the total estimated adjusted cropland acreage on new cotton farms in the county. In determining the acreage from the county acreage reserve which is to be used for establishing acreage allotments for new cotton farms, the county committee shall take into consideration the acreage, if any, to be made available from the State acreage reserve pursuant to subparagraph (4) of § 722.516 (c) for establishing acreage allotments for new cotton farms.

(ii) *Eligibility of a new cotton farm for a cotton acreage allotment.* A cotton acreage allotment for a new cotton farm may be established by the county committee in accordance with instructions issued by the Assistant Administrator if each of the following conditions is met:

(a) An application for a cotton acreage allotment is filed by the farm operator with the county committee by the closing date established by the State committee. In no event is the closing date to be earlier than January 15, 1954.

(b) The farm operator is largely dependent on income from the farm for his livelihood.

(c) The farm is the only farm in the county which is owned or operated by the farm operator or farm owner for which a cotton acreage allotment is established for 1954.

(iii) *Establishment of acreage allotments for new cotton farms.* If the applicant's farm is eligible for a cotton acreage allotment, such allotment shall be established by the committee on the basis of land, labor, and equipment available for the production of cotton; crop-rotation practices; the soil and other physical facilities affecting the production of cotton. The acreage allotment so determined for any such farm shall not exceed the smallest of (a) the acreage allotment established for old cotton farms in the county which are similar with respect to the foregoing factors, (b) the acreage allotment requested by the applicant, and (c) the result obtained by multiplying the adjusted cropland for the farm by the final county cropland factor. The acreage allotments for new cotton farms shall be subject to review and approval by the State committee.

(e) *Use of acreage allocated to county from State acreage reserve for making adjustments in acreage allotments for small farms.* The acreage allocated to a county from the State acreage reserve for making adjustments in acreage allotments for small farms shall be used by the county committee to adjust indicated farm acreage allotments of 15 acres and less for old cotton farms on the basis of the factors set forth in paragraph (d) (1) and (2) of this section for adjusting small farm allotments.

(f) *Allotments for late and reconstituted farms and correction of errors.* The acreage set aside from the county acreage allotment pursuant to paragraph (a) of this section shall be used by the county committee (1) for establishing allotments for old cotton farms for which allotments were not estab-

lished at the time allotments were originally established for old cotton farms in the county because of oversight on the part of the county committee or because the county committee had no information or data with respect to acreage planted to cotton on the farm in 1951, 1952, or 1953, (2) for correcting errors in farm acreage allotments, and (3) for use in establishing acreage allotments for farms which are divided or combined for 1954 as provided in paragraph (g) of this section.

(g) *Allotments for farms divided or combined.* If land which was operated as a single farm in 1953 is divided into two or more tracts for 1954 (1) the acreages of cotton on the farm in 1951, 1952, and 1953 shall be divided among the several tracts in proportion to the acreage of cropland on each tract, except that upon agreement by all interested producers and approval by the county committee, the acreages normally considered as rice land, wheat land, and sugarcane land may be excluded from the cropland on each tract in apportioning the cotton acreage history among the tracts, and (2) a cotton acreage allotment shall be determined for the land which constitutes a farm as it is operated in 1954, in accordance with applicable provisions of paragraphs (c) and (d) of this section. If two or more tracts of land are combined and operated as a single farm in 1954, an allotment for such farm for 1954 shall be determined in accordance with the applicable provisions of paragraphs (c) and (d) of this section.

(h) *Availability of reserves for inspection by interested cotton producers.* The allocations to the county from the State acreage reserve and the total amount and the distribution of the county acreage reserve and all other data used in establishing farm acreage allotments shall be available in the office of the county committee for examination by any interested producer.

§ 722.518 *Allotments for special farms—(a) Allotments for farms returned to agricultural production.* The owner or operator of any cotton farm in an area acquired in 1940 or thereafter for non-farming purposes by the United States or any State or agency thereof which has been returned to agricultural production and which is not eligible under the regulations in this subpart for an acreage allotment as an old cotton farm, may make application to the county committee for a cotton acreage allotment for such farm by the earlier of (1) the prescribed closing date established by the State committee which shall not be later than March 1, 1954, and (2) within three years after acquisition of such farm by the applicant. No such owner or operator shall be eligible for an acreage allotment under this paragraph unless it is established to the satisfaction of the county committee that such person was the owner or operator of a cotton farm at the time it was acquired by the United States or any State or agency thereof. The acreage allotment established for any such farm shall compare with the acreage allotments established for other farms in the same

area which are similar, taking into consideration the acreage allotment, if any, last established for such farm; the land, labor, and equipment available for the production of cotton; the crop-rotation practices; and the soil and other physical facilities affecting the production of cotton.

(b) *Allotments for other farms owned or operated by persons from whom cotton farms were acquired.* The county committee shall establish an acreage allotment or consider an adjustment in the acreage allotment determined under § 722.517, for any farm within the State owned or operated by a person from whom a cotton farm was acquired in the State in 1940 or thereafter for governmental or other public purposes provided application therefor is filed within three years after acquisition of such farm by the applicant. The acreage allotment established for any such farm shall compare with the acreage allotments established for other farms in the same area which are similar, taking into consideration the acreage allotment, if any, of the farm so acquired from the owner or operator; the land, labor, and equipment available for the production of cotton; the crop-rotation practices; and the soil and other physical facilities affecting the production of cotton: *Provided*, That no person shall be entitled to receive an acreage allotment under both this paragraph and paragraph (a) of this section, and no person who, since his farm was acquired for governmental or other public purposes, has acquired an old cotton farm that for 1954 will have a representative cotton acreage allotment shall be entitled to receive an allotment under this paragraph.

(c) *Cotton farm.* For the purpose of paragraphs (a) and (b) of this section, "cotton farm" means any farm on which there was an acreage planted to cotton (or regarded as planted to cotton under Public Law 12, 79th Congress and section 344 (1) of the act) during any of the three years immediately preceding the year in which the farm was acquired by the United States, or any State or any agency thereof, or for any public purpose.

(d) *Acreage allotted in addition to county and State acreage allotments.* Except to the extent that the production of any farm for which an acreage allotment is established under paragraphs (a) and (b) of this section has contributed to the county and State acreage allotments, the additional acreage allotted under paragraphs (a) and (b) of this section shall be in addition to the acreage allotments otherwise established for the county and State under the applicable provisions of the regulations in this subpart and the production of the additional acreage so allotted shall be in addition to the national marketing quota.

#### LONG STAPLE COTTON

§ 722.519 *Extra long staple cotton—(a) If marketing quotas under section 347 of the act are in effect for the 1954 crop.* If marketing quotas for extra long staple cotton are in effect for the 1954 crop, the provisions of this subpart relating to cotton shall not apply to those types of extra long staple cotton which

are subject to marketing quotas under the provisions of section 347 of the act.

(b) *If marketing quotas under section 347 of the act are not in effect for the 1954 crop.* If marketing quotas for extra long staple cotton are not in effect for the 1954 crop—

(1) All of the 1954 crop of American-Egyptian cotton which is produced from pure strain seed in Cochise, Graham, Greenlee, Maricopa, Mohave, Pima, Pinal, Santa Cruz and Yuma Counties, Arizona, and Imperial, and Riverside Counties, California, and Chaves, Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otero, and Sierra Counties, New Mexico, and Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, and Ward Counties, Texas, shall be exempted from all provisions of the regulations in this subpart with respect to marketing quotas for the 1954 cotton crop, provided such cotton is ginned on a roller type gin or the Assistant Administrator authorizes the cotton to be ginned on another type gin for experimental purposes or to prevent loss of the cotton due to frost or other adverse conditions, except that such exemption shall not apply to any farm unless the approval of the county committee for the planting of such cotton on any farm is obtained in advance of planting time. Such approval shall be based upon findings by the county committee (i) that pure strain American-Egyptian seed is to be planted and (ii) that roller type gin facilities are available in the area for the ginning of such cotton and that such facilities will be used in the ginning of all cotton produced from such seed. In connection with determining the purity of seed, the county committee may require the farm operator to furnish approved purity test certificates or approved State certification tags covering the American-Egyptian seed to be planted showing that such seed is of pure strain.

(2) All of the 1954 crop of Sea Island and Sealand cotton which is produced from pure strain seed in Alachua, Columbia, Hamilton, Jefferson, Lake, Madison, Marion, Orange, Putnam, Seminole, Suwannee, Union and Volusia Counties, Florida, and Atkinson, Berrien, Cook, and Lanier Counties, Georgia, and all of the 1954 crop of Sea Island cotton which is produced from pure strain seed in Puerto Rico, shall be exempted from all provisions of the regulations in this subpart with respect to marketing quotas for the 1954 crop, provided such cotton is ginned on a roller-type gin or the Assistant Administrator authorizes the cotton to be ginned on another type gin for experimental purposes or to prevent loss of the cotton due to frost or other adverse conditions, except that such exemption shall not apply to any farm unless the approval of the county committee for the planting of such cotton on any farm is obtained in advance of planting time. Such approval shall be based upon findings by the county committee (i) that pure strain Sea Island seed, or pure strain Sealand seed, is to be planted and (ii) that roller-type gin facilities are available in the area for the ginning of such cotton and that such facilities will be used in the ginning of all cotton produced from such seed. In

connection with determining the purity of seed, the county committee may require the farm operator to furnish approved purity test certificates or approved State certification tags covering the Sea Island seed and the Sealand seed to be planted showing that such seed is of pure strain; and

(3) Any cotton produced from the 1954 crop which staples one and one-half inches or more in length and which is ginned on a roller-type gin, or the Assistant Administrator authorizes the cotton to be ginned on another type gin for experimental purposes or to prevent loss of the cotton due to frost or other adverse conditions, shall be exempted from the provisions of the regulations in this subpart with respect to marketing quotas for the 1954 crop of cotton regardless of where the cotton is produced in the United States or the variety of cotton from which such cotton is produced.

**FARM MARKETING QUOTA AND FARM MARKETING EXCESS**

§ 722.520 *Notice of farm acreage allotment and marketing quota.* Immediately after acreage allotments for farms in a county or other local administrative area are established and approved by the State committee pursuant to § 722.529 (a) the county committee shall mail to the operator of each such farm a written notice of the farm acreage allotment and marketing quota for the farm. The county committee shall also mail to the operator of (a) each new cotton farm for which application for an allotment is made but for which it is determined that no farm acreage allotment and marketing quota will be established and (b) each farm for which no cotton acreage data was reported pursuant to § 722.526 and the county committee has no reliable basis for appraising data for the farm but the county committee believes cotton was planted on the farm in one or more of the years 1951, 1952 and 1953, a similar written notice showing "none" as the acreage allotment and marketing quota established for the farm. The notice shall contain at or near the top thereof the following statement: "To all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which this acreage allotment and marketing quota are established." Notice so given shall constitute notice to all such persons. Such notice shall also contain a brief statement of the procedure whereby application for review of the marketing quota may be made under section 363 of the act. A copy of each notice, containing a notation thereon of the date of mailing the notice to the operator of the farm, shall be kept among the permanent records of the county committee, and upon request a copy thereof, duly certified as a true and correct copy, shall be furnished without charge to any person who as operator, landlord, tenant, or sharecropper is interested in the cotton produced in 1954 on the farm for which the notice is given. Insofar as practicable, the notice for each old cotton farm shall be prepared and mailed to the operator so

as to be received prior to December 15, 1953, the date on which the referendum to determine whether cotton farmers favor or oppose marketing quotas for the 1954 crop will be held.

§ 722.521 *Amount of the farm marketing quota.* The farm marketing quota for any farm for the 1954 crop of cotton shall be the actual production of lint cotton for the acreage planted to cotton on the farm less the farm marketing excess.

§ 722.522 *Amount of the farm marketing excess—(a) Where the acreage planted to cotton is determined.* The farm marketing excess for the 1954 crop of cotton shall be the normal production of the acreage of cotton on the farm in excess of the farm acreage allotment. Where it is established by any producer on the farm in connection with an application filed by him or by any other producer on the farm in accordance with regulations to be issued under this part by the Secretary, that the normal production of the excess acreage is larger than the amount by which the actual production of cotton in 1954 on the farm exceeds the normal production of the farm acreage allotment, the farm marketing excess shall be adjusted downward to the smaller amount.

(b) *Where the acreage planted to cotton is not determined.* Whenever the determination of the acreage planted to cotton in excess of the farm acreage allotment is prevented by the farm operator, the farm marketing excess shall be the total number of pounds of cotton produced in 1954 on the farm. In the event the farm operator or any other producer on the farm establishes, in accordance with regulations to be issued under this part by the Secretary, the total number of pounds of cotton produced in 1954 on the farm, the farm marketing excess shall be the number of pounds of cotton produced in 1954 on the farm in excess of the normal production of the farm acreage allotment.

§ 722.523 *Publication of farm acreage allotments and marketing quotas.* One copy of each notice of the farm acreage allotment and marketing quota for farms in a county shall be placed in binders or folders, or in lieu thereof a listing of such allotments shall be prepared, and such notices or listing shall be kept freely available in the office of the county committee for public inspection for a period of not less than thirty calendar days. At the end of such period the copies of the notices or the listing shall be filed in the office of the county committee and remain readily available for further public inspection. If the county is divided into administrative areas, separate binders, folders, or listings shall be prepared and made available for inspection for each administrative area.

§ 722.524 *Successors-in-interest.* Any person who succeeds to the interest of a producer in a farm, or in a cotton crop, or in cotton for which a farm marketing quota and farm marketing excess were established, shall, to the same extent as

his predecessor, be entitled to all the rights and privileges incident to such marketing quota and marketing excess and be subject to the restrictions on the marketing of cotton.

§ 722.525 *Marketing quotas not transferable.* A farm marketing quota is established for a farm and may not be assigned or otherwise transferred in whole or in part to any other farm.

**MISCELLANEOUS PROVISIONS**

§ 722.526 *Report of data and information for old cotton farms.* The owner, operator, or any other interested person shall furnish the county committee of the county in which the farm is located the data and information required to be entered on Form CN-364 (1953) "Farm Acreage Report", a copy of which may be obtained from the county committee of any county in which cotton is grown or from the State committee. The county committee, with the assistance of the community committee, shall, insofar as possible, appraise and otherwise determine the required data and information for any farm for which such report on Form CN-364 (1953) is not filed by a person having an interest in the farm, using for such appraisals and determinations the records of the county office for the farm and other farms in the community and other available information.

§ 722.527 *Acreage planted to cotton—(a) Adjustment of acreage planted in excess of farm acreage allotment.* If the acreage determined to be planted to cotton on a farm in 1954 is in excess of the farm acreage allotment, the farm operator may, not later than a date established under instructions issued by the Assistant Administrator, adjust such planted acreage to the farm acreage allotment. The date established under such instructions shall afford farm operators a reasonable time for making such adjustments.

(b) *Underplanting the farm acreage allotment.* For any farm on which cotton is planted in 1954 and the acreage of cotton in 1954 is less than the 1954 farm acreage allotment by not more than the larger of 10 percent of the allotment or one acre, an acreage equal to the farm acreage allotment shall be deemed to be the acreage planted to cotton on the farm in 1954, and the additional acreage added to the cotton acreage history for the farm shall be added to the cotton acreage history for the county and State.

(c) *No credit for overplanting the farm acreage allotment.* Any acreage planted to cotton in 1954 in excess of the farm acreage allotment for the 1954 crop of cotton shall not be taken into account in establishing State, county, and farm acreage allotments for the 1955 and subsequent crops of cotton.

§ 722.528 *Availability of records.* The State and county committees shall make available for inspection by owners or operators of farms receiving cotton acreage allotments, all records pertaining to cotton acreage allotments and marketing quotas.

§ 722.529 *Approval of county committee determinations and redelegation of authority by the State committee—(a) Approval of county committee determinations.* The State committee shall review all acreage allotments and may correct or require correction of any determinations made under §§ 722.517 to 722.527. All acreage allotments shall be approved by the State committee and no official notice of acreage allotment and marketing quota shall be mailed to a farm operator until such allotment has been approved by the State committee.

(b) *Redelegation of authority.* Any authority delegated to the State committee by the regulations in §§ 722.511 to 722.530 may be redelegated by the State committee.

#### REVIEW OF QUOTAS

§ 722.530 *Review of quotas—(a) Review committees.* Any producer who is dissatisfied with the farm acreage allotment or marketing quota established for his farm, or in the case of a new cotton farm with the action of the county committee in refusing to establish a farm acreage allotment or marketing quota for such farm, may, by making application within 15 days after the mailing to him of the notice provided for in § 722.520, have such allotment, quota, or determination reviewed by a review committee composed of three farmers appointed by the Secretary. The review committee shall, upon proper application, review the action of the county committee. The review committee in determining any farm acreage allotment or marketing quota shall, to the same extent as the county committee, be limited to the establishment of a farm acreage allotment or marketing quota in an amount which, under the Act and regulations, should have been established. Unless such application is made within 15 days, the original determination of the farm acreage allotment or marketing quota shall be final. All applications for review shall be made in accordance with the Marketing Quota Review Regulations issued by the Secretary.

(b) *Court review.* If the producer is dissatisfied with the determination of the review committee, he may, within 15 days after notice of such determination is mailed to him by registered mail, institute proceedings against the review committee to have the determination of the review committee reviewed by a court in accordance with section 365 of the act.

**NOTE:** The reporting requirements contained herein have been approved by, and subsequent reporting requirements will be subject to the approval of the Bureau of Budget in accordance with Federal Reports Act of 1942.

Done at Washington, D. C., this 20th day of November 1953. Witness my hand and the seal of the Department of Agriculture.

[SEAL] EZRA TAFT BENSON,  
Secretary of Agriculture.

[F. R. Doc. 53-9954; Filed, Nov. 25, 1953;  
8:51 a. m.]

No. 231—2

## TITLE 9—ANIMALS AND ANIMAL PRODUCTS

### Chapter I—Bureau of Animal Industry, Department of Agriculture

#### Subchapter A—Meat Inspection Regulations

#### PART 14—TANKING AND DENATURING CONDEMNED CARCASSES AND PARTS

#### PART 16—MARKING, BRANDING, AND IDENTIFYING PRODUCTS

#### PART 17—LABELING

#### PART 18—REINSPECTION AND PREPARATION OF PRODUCTS

#### PART 24—EXPORT STAMPS AND CERTIFICATES

#### PART 28—DEFINITIONS AND STANDARDS OF IDENTITY

#### MISCELLANEOUS AMENDMENTS

On October 20, 1953, there was published in the FEDERAL REGISTER (18 F. R. 6645) a notice of proposed amendments of the Meat Inspection Regulations (9 CFR, Chapter I, Subchapter A, as amended) After due consideration of all relevant matters submitted in connection with the notice, the Secretary of Agriculture, pursuant to the authority conferred upon him by the Meat Inspection Act, as amended (21 U. S. C. 71-91) and section 306 of the Tariff Act of 1930 (19 U. S. C. 1306) hereby amends the aforesaid regulations as follows:

1. Paragraph (a) of § 14.1 is amended to read:

(a) Condemned carcasses and product at official establishments having facilities for tanking shall be disposed of by tanking as follows:

(1) The lower opening of the tank shall first be sealed securely by a Meat Inspection employee, except when permanently connected with a blow line, then the condemned carcasses and product shall be placed in the tank in his presence, after which the upper opening shall also be sealed securely by such employee, who shall then see that the contents of the tank are subjected to sufficient heating for sufficient time to effectively destroy the contents for food purposes.

(2) The use of equipment such as crushers or hashers for pre-tanking preparation of condemned carcasses and product in the inedible products department has been found to give inedible character and appearance to the material. Accordingly, if condemned carcasses and product are so crushed or hashed, conveying systems, rendering tanks, and other equipment used in the further handling of the crushed or hashed material need not be locked or sealed during the tanking operation. If the rendering tanks or other equipment contain condemned material not so crushed or hashed, the equipment shall be sealed as prescribed in subparagraph (1) of this paragraph. If the crushed or hashed material is not rendered in the establishment where produced it shall be denatured as provided for in § 14.4.

2. Paragraph (a) of § 14.4 is amended to read:

(a) Any carcass or product condemned at an official establishment which has no facilities for tanking shall be denatured with crude carbolic acid, cresylic disinfectant, or other prescribed agent, or be destroyed by incineration, under the supervision of a Meat Inspection employee. When such carcass or product is not incinerated it shall be slashed freely with a knife, before the denaturing agent is applied.

3. Paragraph (d) of § 16.13 is amended to read:

(d) (1) When product is placed in casing to which artificial coloring is applied, as permitted under this subchapter, the article shall be legibly and conspicuously marked by stamping or printing on the casing or securely affixing to the article the words "artificially colored."

(2) If the casing is removed from product at an official establishment and there is evidence of artificial coloring on the surface of the product, the article from which the casing has been removed shall be marked by stamping directly thereon or by securely affixing thereto the printed words "artificially colored."

(3) The casing containing product need not be marked to show that it is colored if it is colored prior to its use as a covering for the product, and the coloring is of a kind and so applied as not to be transferable to the product and not to be misleading or deceptive with respect to color, quality, or kind of product enclosed in the casing.

(4) In the case of sausage of the smaller varieties the marking prescribed in this paragraph may be limited to links bearing the inspection legend.

4. Paragraph (b) of § 16.15 is amended to read:

(b) When any product prepared in an official establishment for domestic commerce has been inspected and passed and is enclosed in a cloth wrapping, such wrapping may bear, in lieu of the domestic meat label, the inspection legend and establishment number applied by the approved 2½-inch rubber brand: *Provided*, The domestic meat label or rubber brand may be omitted in those cases in which the inspection legend and establishment number on the articles themselves are clearly legible through the wrapping or the wrapping is labeled in accordance with Part 17 of this subchapter: *Provided further*, That plain unprinted wrappings such as stockinnettes, cheese cloth, paper and crinkled paper bags for properly marked fresh meat, including carcasses, and primal parts thereof, which are used solely to protect the product against soiling or excessive drying during transportation or storage need not bear the marks of inspection.

5. Section 16.16 is amended by deleting paragraph (a) and amending the section to read:

§ 16.16 *Tank cars and tank trucks of edible product.* Each tank car and each tank truck carrying inspected and passed product from an official establishment shall bear a label containing the true name of the product, the inspection

legend, the establishment number, and the words "date of loading," followed by a suitable space for the insertion of the date. The label shall be located conspicuously and shall be printed on material of such character and so affixed as to preclude detachment or effacement upon exposure to the weather. Before the car or truck is removed from the place where it is unloaded, the carrier shall remove or obliterate such label.

6. Section 17.8 (c) (37) is amended to read:

"(37) Product labeled "ham spread," "tongue spread," and the like, shall contain not less than 50 percent of the meat ingredient named computed on the weight of the fresh meat. Other meat and fat may be used to give the desired spreading consistency provided it does not detract from the character of the named spread.

7. Paragraph (c) of § 17.8 is amended by adding the following new subparagraphs:

(54) The preparation of cooked cured product such as hams, pork shoulders, pork shoulder picnics, pork shoulder butts, and pork loins, either by moist or dry heat, shall not result in the finished cooked article weighing more than the fresh uncured product; that is, the weight of the finished cooked article plus the weight of the skin, bones, fat, and trimmings removed during the preparation shall not exceed the weight of the fresh uncured product.

(55) Product labeled "chopped ham," "pressed ham," "chopped ham with natural juices," and "pressed ham with natural juices," shall be prepared with ham containing no more shank meat than is normally present in the boneless ham. The weight of the cured chopped ham prior to canning shall not exceed the weight of the fresh uncured ham, exclusive of the bones and fat removed in the boning operations, plus the weight of the curing ingredients and 3 percent moisture.

8. Paragraph (b) of § 17.9 is amended to read:

(b) (1) When product is placed in casing to which artificial coloring is applied, as permitted under this subchapter, there shall appear on the label, in a prominent manner and contiguous to the name of the product, the words "artificially colored."

(2) If the casing is removed from product at an official establishment and there is evidence of the artificial coloring on the surface of the product, there shall appear on the label in a prominent manner and contiguous to the name of the product, the words, "artificially colored."

(3) When the casing is colored prior to its use as a covering for product, the color shall be of a kind and so applied as not to be transferable to the product and not to be misleading or deceptive with respect to color, quality or kind of product enclosed in the casing, and no reference to color need appear on the label.

9. Paragraph (b) of § 18.7 is amended to read:

(b) There may be added to product, with appropriate declaration as required under Parts 16 and 17 of this subchapter, common salt, approved sugars, wood smoke, a vinegar, flavorings, spices, sodium nitrate, sodium nitrite, potassium nitrate (saltpeter), and potassium nitrite.

10. Section 18.7 (d) (9) is amended to read:

(9) Monoisopropyl citrate not to exceed  $\frac{1}{100}$  of 1 percent. When used in combination with other antioxidants, the amount of monoisopropyl citrate shall not exceed  $\frac{1}{1000}$  of 1 percent.

11. Paragraph (b) of § 18.10 is amended to read:

(b) Products containing pork muscle tissue (including hearts, pork stomachs and pork livers) or the pork muscle tissue which forms an ingredient of such products, including those named in this paragraph and products of the character thereof, are classed as articles which shall be effectively heated, refrigerated, or cured at a federally inspected establishment to destroy any possible live trichinae: Bologna; frankfurts; viennas; smoked sausage; knoblauch sausage; mortadella; all forms of summer or dried sausage, including mettwurst; cooked loaves; roasted, baked, boiled, or cooked ham, pork shoulder, or pork shoulder picnic; Italian-style ham; Westphalia-style ham; smoked boneless pork shoulder butts; cured meat rolls; capocollo (capicola, capacola) coppa; fresh or cured boneless pork shoulder butts, hams, loins, shoulders, picnics, and similar pork cuts, in casings or other containers in which ready-to-eat delicatessen articles are customarily enclosed (excepting Scotch-style hams) cured boneless pork loin; boneless back bacon, smoked pork cuts such as hams, shoulders, loins, and picnics (excepting smoked hams and smoked pork shoulder picnics which are specially prepared for distribution in tropical climates, or smoked hams delivered to the Armed Services)

12. Section 24.7 is amended to read:

§ 24.7 *Uninspected tallow, stearin, oleo oil, etc., not to be exported unless exporter certifies as inedible.* No tallow, stearin, oleo oil, or the rendered fat derived from cattle, sheep, swine, or goats, that has not been inspected, passed, and marked in compliance with the regulations in this subchapter shall be exported, unless the shipper files with the collector of customs at the port from which the export shipment is made a certificate by the exporter that such article is inedible.

13. Paragraph (b) of § 28.2 is amended by adding the following subparagraph:

(8) Beef fat.

The primary purposes of the foregoing amendments are to incorporate in the regulations changes which have been thoroughly worked out with the meat packing industry during the past year and to include new requirements controlling the composition and treatment of certain meat food products along lines

which have been thoroughly investigated by Meat Inspection, Bureau of Animal Industry.

(Ch: 2907, 34 Stat. 1264, sec. 306, 46 Stat. 600; 19 U. S. C. 1306, 21 U. S. C. 89)

The foregoing amendments shall become effective December 29, 1953.

Done at Washington, D. C., this 20th day of November 1953.

[SEAL] TRUE D. MORSE,  
Acting Secretary of Agriculture.  
[F. R. Doc. 53-9955; Filed, Nov. 25, 1953;  
8:52 a. m.]

## TITLE 14—CIVIL AVIATION

### Chapter I—Civil Aeronautics Board

[Supp. 4]

#### PART 26—AIR-TRAFFIC CONTROL-TOWER OPERATOR CERTIFICATES

##### EXAMINATION

The purposes of this supplement are to (1) make editorial corrections and (2) explain how certain applicants for air-traffic control-tower operator certificates may satisfy the examination requirements of § 26.3.

1. In § 26.3-1, published on December 23, 1950, in 15 F. R. 9231, the caption and second sentence are revised to read:

§ 26.3-1 *Content and scope of written examination required for control-tower operator certificate in proof of aeronautical knowledge (CAA policies which apply to § 26.3)* \* \* \* Since a control-tower operator's aeronautical knowledge requirements are extensive in scope, complete coverage in the examination is not feasible. \* \* \*

2. A new § 26.3-2 is adopted to read:

§ 26.3-2 *Demonstration of knowledge on equivalent examination (CAA interpretations which apply to § 26.3)* An applicant for an air-traffic control-tower operator certificate who has passed the written examination for an Airways Operations Specialist Certificate will be deemed to have passed the examination prescribed in § 26.3, since the examinations are equivalent in content and scope.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 602, 52 Stat. 1008, as amended; 49 U. S. C. 552)

This supplement shall become effective November 30, 1953.

[SEAL] F. B. LEE,  
Administrator of Civil Aeronautics.  
[F. R. Doc. 53-9927; Filed, Nov. 25, 1953;  
8:45 a. m.]

[Supp. 19]

#### PART 42—IRREGULAR AIR CARRIER AND OFF-ROUTE RULES

##### MAINTENANCE OF LARGE AIRCRAFT

Under § 42.32 (a), air carriers are required to maintain facilities for the proper inspection, maintenance, overhaul, and repair of large aircraft used in conducting Part 42 operations, unless

they make arrangements acceptable to the Administrator with other persons possessing such facilities. The purpose of this supplement is to redefine "facilities for the proper inspection, maintenance, overhaul, and repair" and to explain how the Administrator will determine the acceptability of arrangements made for such facilities.

1. Section 42.32-1, published on October 12, 1950, in 15 F. R. 6853, and amended on March 27, 1953, in 18 F. R. 1719, is deleted.

2. Sections 42.32-2 through 42.32-6, published on November 22, 1949, in 14 F. R. 7036, and amended on November 9, 1951, in 16 F. R. 11415, are redesignated §§ 42.32-3 through 42.32-7, respectively.

3. Sections 42.32-1 and 42.32-2 are adopted to read:

§ 42.32-1 *Facilities for the proper inspection, maintenance, overhaul, and repair (CAA interpretations which apply to § 42.32)* (a) The facilities required in § 42.32 (a) include housing, work space, equipment, supplies, materials, tools, parts, and aircraft components in sufficient quantity and quality to assure that the needed inspection, maintenance, overhaul, and repair of the air carrier's aircraft (including airframes, powerplants, propellers, and appliances) can be satisfactorily performed at all times by either the air carrier or persons with whom the air carrier has made arrangements for the performance of such functions. The housing, facilities, equipment, and materials specified in § 52.21-1 through § 52.21-3 of this subchapter and § 52.30-1 through § 52.36-1 of this subchapter which are appropriate to the particular air carrier's aircraft and maintenance system, are considered to be the minimum facilities required by § 42.32 (a)

§ 42.32-2 *Arrangements acceptable to the Administrator (CAA policies which apply to § 42.32 (a))* The Administrator will determine the acceptability of arrangements made by the air carrier with other persons for the inspection, maintenance, overhaul, and repair of the types of aircraft used by the air carrier on the basis of the following criteria:

(a) Such arrangements conform to the approved continuous airworthiness, maintenance, and inspection program which the air carrier must perform in accordance with its maintenance manual.

(b) The inspection, maintenance, overhaul, and repair of the air carrier's aircraft, including airframes, powerplants, propellers, and appliances, is performed, inspected, and/or approved, by a certificated repair station, appropriately certificated air carrier, or manufacturer, in accordance with §§ 18.10 (b), (d) or (e) 18.11 (a) (2) (3) or (4), and 18.11 (b) (2) (3) or (4) of this subchapter: *Provided*, That inspections and maintenance specified in subparagraphs (1) and (2) of this paragraph may be performed and/or approved by a certificated mechanic in accordance with §§ 18.10 (a) and 18.11 (a) (1) of this subchapter.

(1) The performance of preventative maintenance and the performance and approval of minor maintenance, minor repairs, and minor inspections at points in the air carrier's area of operation, where persons specified in § 18.10 (b), (d) or (e) of this subchapter do not provide the facilities required in § 42.32 (a)

(2) The performance of inspections and associated minor maintenance operations which are limited to pre-flight inspections, daily inspections, and the most frequent periodic inspection and/or check listed in the air carrier's maintenance manual other than pre-flight or daily inspections.

(c) Such arrangements provide that all replacement parts, components, and materials furnished directly or indirectly by such persons for use on the air carrier's aircraft conform to the type, quality, strength, and standards of maintenance established in the air carrier's maintenance manual and as required by § 18.30 of this subchapter.

(d) The air carrier's maintenance manual provides full, clear, and accurate information and instructions regarding the inspection, maintenance, overhaul, and repairs to be performed by such persons, and contains the names, location of facilities, and obligations of such persons to the carrier.

(e) The overhaul, major repair, and major inspection of aircraft and aircraft components are performed by or under the direct and immediate supervision of persons who are prime contractors and are conducted at the principal maintenance base of such persons or within the environs of such maintenance base.

(f) Such arrangements are made with qualified persons who provide competent personnel and possess adequate facilities and all other requisites appropriate to the type of aircraft or aircraft component on which any inspection, maintenance, or repair is to be performed for the air carrier.

(g) Such arrangements are reviewed by the Administrator prior to the accomplishment of any inspection, maintenance, or repairs; except that temporary arrangements may be made on an emergency basis without prior review by the Administrator provided that the air carrier gives written notice to the Administrator of each such arrangement not later than ten days after any inspection, maintenance, or repairs have been performed on such emergency basis and further provided that such temporary arrangements are limited to persons who are fully qualified and competent to perform such inspection, maintenance or repairs.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 604, 605; 53 Stat. 1007, 1010; 49 U. S. C. 551, 554, 555)

This supplement shall become effective December 15, 1953.

[SEAL] F. B. LEE,  
Administrator of Civil Aeronautics.

[F. R. Doc. 53-9929; Filed, Nov. 25, 1953; 8:46 a. m.]

Chapter II—Civil Aeronautics Administration, Department of Commerce  
[Amdt. 50]

PART 610—MINIMUM EN ROUTE IFR ALTITUDES

MISCELLANEOUS AMENDMENTS

The minimum en route IFR altitudes appearing hereinafter have been coordinated with interested members of the industry in the regions concerned insofar as practicable. The altitudes are adopted without delay in order to provide for safety in air commerce. Compliance with the notice, procedures, and effective date-provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required.

Part 610 is amended as follows:

1. Section 610.104 *Amber civil airway No. 4* is amended to read in part:

From—	To—	Minimum altitude
Newalla (INT), Okla.	Tulsa, Okla. (LFR)	2,400

2. Section 610.210 *Red civil airway No. 10* is amended to read in part:

From—	To—	Minimum altitude
Atlanta, Ga. (LFR)	Thomson (INT), Ga.	2,200
Thomson (INT), Ga.	Augusta, Ga. (LFR)	2,200
	Eastbound only	2,000

3. Section 610.298 *Red civil airway No. 98* is amended to read:

From—	To—	Minimum altitude
Vichy, Mo. (LFR)	Int. 245°-068° mag. brg. Vichy, Mo. (LFR), and S. crs. St. Louis, Mo. (LFR).	2,500

4. Section 610.603 *Blue civil airway No. 3* is amended to read in part:

From—	To—	Minimum altitude
Grand Rapids, Mich. (LFR)	White Cloud (INT), Mich.	2,800
White Cloud (INT), Mich.	Cadillac, Mich. (LF/RBN).	2,700

5. Section 610.610 *Blue civil airway No. 10* is amended to read in part:

From—	To—	Minimum altitude
Fresno, Calif. (LFR)	Evergreen, Calif. (LF/RBN)	6,000
Los Banos, Calif. (FM)	Fresno, Calif. (LFR) (eastbound only)	3,000
Evergreen, Calif. (LF/RBN)	Oakland, Calif. (LFR)	5,000

\*6,000'—Minimum crossing altitude at Evergreen (LF/RBN), southeastbound.

6. Section 610.654 *Blue civil airway No. 54* is amended to read:

From--	To--	Minimum altitude
Salinas, Calif. (LFR)..	Evergreen Calif. (LF/RBN).	6,000.
Evergreen, Calif. (LF/RBN). <sup>1</sup>	San Francisco, Calif. (LFR).	3,000

<sup>1</sup>6,000'—Minimum crossing altitude at Evergreen (LF/RBN), Southeastbound.

7. Section 610.670 *Blue civil airway No. 70* is amended to read in part:

From--	To--	Minimum altitude
Int. 200°-110° mag. brg. Oklahoma City, Okla. (LFR), and 20°-200° mag. brg. Tulsa, Okla. (LFR), Ardmore, Okla. (LF/RBN).	Tulsa, Okla. (LFR)..	2,400
Mineral Wells, Tex. (LF/RBN).	Ardmore, Okla. (LF/RBN).	2,600

8. Section 610.1001 *Direct routes, United States* is amended by adding:

From--	To--	Minimum altitude
Galena, Alaska (LFR).	Kotzebue, Alaska (LF/RBN).	5,500
McGrath, Alaska (LFR).	Galena, Alaska (LFR).	5,500
Wichita, Kans. (VOR).	North Fork, Kans. (LF/RBN).	3,000
Wichita, Kans. (LFR).	North Fork, Kans. (LF/RBN).	3,000

9. Section 610.1001 *Direct routes, United States* is amended to eliminate:

From--	To--	Minimum altitude
Spartanburg, S. C. (LFR).	Hendersonville (INT), N. C.	6,300
Hendersonville (INT), N. C.	Bulls Gap (INT), Tenn.	8,000

10. Section 610.6002 *VOR civil airway No. 2* is amended to read in part:

From--	To--	Minimum altitude
Muskegon, Mich. (VOR): Direct..... S. alter.....	Lansing, Mich. (VOR): Direct..... S. alter.....	2,500 2,200

11. Section 610.6015 *VOR civil airway No. 15* is amended to read in part:

From--	To--	Minimum altitude
Ardmore, Okla. (VOR).	Okemah (INT), Okla.	3,000
Okemah (INT), Okla.	Tulsa, Okla. (VOR).	3,000
Ardmore, Okla. (VOR) via E alter.	Tulsa, Okla. (VOR) via E alter.	3,000

<sup>1</sup>2,400'—Minimum terrain clearance altitude.

12. Section 610.6069 *VOR civil airway No. 69* is amended to read in part:

From--	To--	Minimum altitude
Farmington, Mo. (VOR).	Fenton (INT), Mo. 1.	2,500
Fenton (INT), Mo. 1.	St. Louis, Mo. (VOR).	2,500

<sup>1</sup>5,000'—Minimum reception altitude.

13. Section 610.6112 *VOR civil airway No. 112* is amended to read in part:

From--	To--	Minimum altitude
Portland (Manor), Oreg. 1.	The Dalles, Oreg. (VOR)	7,000

<sup>1</sup>4,500'—Minimum crossing altitude at Portland (VOR), eastbound.

14. Section 610.6114 *VOR civil airway No. 114* is amended by adding:

From--	To--	Minimum altitude
Pueblo, Colo. (VOR)....	Purgatoire (INT), Colo.	7,500
Purgatoire (INT), Colo.	Clayton (INT), Tex.	10,000
Clayton (INT), Tex.	Dalhart, Tex. (VOR), southbound.	10,000 7,200

<sup>1</sup>8,900'—Minimum terrain clearance altitude.

<sup>2</sup>6,200'—Minimum terrain clearance altitude.

15. Section 610.6117 *VOR civil airway No. 117* is amended to read in part:

From--	To--	Minimum altitude
Mineral Wells, Tex. (VOR).	Bowie (INT), Tex.	2,300
Bowie (INT), Tex.	Ardmore, Okla. (VOR).	2,600

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

These rules shall become effective December 1, 1953.

[SEAL]

F. B. LEE,  
Administrator of Civil Aeronautics.

[F. R. Doc. 53-9928; Filed, Nov. 25, 1953; 8:45 a. m.]

## TITLE 39—POSTAL SERVICE

### Chapter I—Post Office Department

#### PART 34—CLASSIFICATION AND RATES OF POSTAGE

#### PART 35—PROVISIONS APPLICABLE TO THE SEVERAL CLASSES OF MAIL MATTER MISCELLANEOUS AMENDMENTS

In Part 34—Classification and Rates of Postage make the following changes:  
a. In § 34.9 *Business reply cards and envelopes* amend paragraph (c) to read as follows:

(c) *Application for permit.* A person or concern desiring a permit to send out or distribute business reply cards and envelopes for return under this section

shall make application therefor on Form 3614 to the postmaster at the office to which the cards or envelopes are to be returned, who shall issue a permit on Form 3616. The instructions for the permit holder on the form shall be strictly complied with. No fee is required for the issuance of such a permit.  
(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

b. Section 34.50 *Separations for delivery at letter-carrier post office* is rescinded.

c. In § 34.66 *Pound rate for bulk mailings of third-class matter* make the following changes:

1. Amend subparagraph (1) of paragraph (c) to read as follows:

(1) *Procedure.* Persons desiring the privilege of mailing third-class matter in bulk under the provisions of this section shall make application to the postmaster for a permit to pay postage under one of the methods described in paragraph (b) of this section.

2. Delete paragraph (d)

3. Redesignate paragraph (c) as paragraph (d) and amend same to read as follows:

(d) *Conditions for mailing.* Mailings under the provisions of this section are subject to the following conditions:  
(1) Each mailing shall be accompanied with a statement on a form provided therefor, signed by the sender, showing such information as may be required.

(2) When there are 10 or more pieces in a mailing for any city or state they shall be tied out into separate packages. State packages shall be properly labeled. Such separations shall also be made for post office stations or branches when the station or branch name forms a part of the address.

(3) Mailings under this section may not be registered or sent as insured or c. o. d. mail.

4. Delete paragraphs (f), (g), (h), and (i)

(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

In Part 35—*Provisions Applicable to the Several Classes of Mail Matter*, make the following changes:

a. In § 35.4 *Mailing of matter without stamps affixed* make the following changes:

1. Amend paragraphs (e), (f), and (g) to read as follows:

(e) *Fee to accompany application for nonmetered permit—(1) Amount.* Each application for a permit to mail matter without stamps affixed as provided by sections 221a, 273, 291, 291a, and 295 of this title, and the regulations made pursuant thereto by the Postmaster General, shall be accompanied with a fee of \$10: *Provided*, That no fee shall be required to accompany applications for permits to mail matter without stamps affixed as metered mail. (47 Stat. 647; 39 U. S. C. 273a.)

(2) *Receipt for fees.* Receipts for fees collected under the provisions of this section shall be issued on Form 3603. (See § 34.66 (c) (2) of this chapter re-

garding annual fee for bulk mailings of third-class matter.)

(f) *Application.* Applications to mail matter of any class without stamps affixed under the provisions of this section shall be filed on Form 3612 at the post office where the mailings are to be made.

(g) *Permit.* Postmasters shall issue permits on Form 3601 for mailing non-metered matter of all classes, and on Form 3601-A for mailing metered matter of all classes.

2. Paragraphs (i) (j) (k) (l) (m) and (n) are amended to read as follows:

(i) *Acceptance of second-class and international matter.* Only such second-class matter as is chargeable with postage at the rate to Canada of 1 cent for each 4 ounces; the local and head-quarters rates of 1 or 2 cents per copy and the transient second-class rate of 2 cents for the first 2 ounces and 1 cent for each additional 2 ounces (see §§ 34.40 (g) 34.41 (a) (b), (i) and (j) and 34.42 of this chapter) and only such international matter as is subject to the international printed matter rate may be accepted as nonmetered matter under the provisions of this section.

(j) *Statement to accompany non-metered mailings.* Publishers shall file a statement on Form 3542 in accordance with the instructions in § 34.46 (b) of this chapter for mailings of second-class publications charged with postage at the per copy rates required by § 34.41 of this chapter. Each mailing of other non-metered matter shall be accompanied with a statement on Form 3602.

(k) *Verification of statement of mailing.* Mailings shall be verified with Form 3602 and certified on the back of the form by two employees, except that when only one employee is on duty, he may perform the verification and certification. Mailings shall be verified with Form 3542 in the manner required by § 34.45 (g) of this chapter.

(l) *Separations.* The mailer shall separate the mailings in such manner as may be prescribed by the Department. When the mailing of matter of the second, third, or fourth class extends over two or more consecutive days, and the number of pieces presented on the last day to complete the mailing is less than prescribed by paragraph (d) of this section, such number shall be accepted and the receipt Form 3603 or 3539 shall be endorsed "Remainder of mailing of -----" with the date of the preceding mailing.

(m) *Payment of postage and issuance of receipts.* Postage on the entire quantity shall be paid at or before the time the matter is presented for mailing, either in money or, at the option of the postmaster and at his risk, by check drawn to his order. The postmaster shall issue to the mailer a receipt on Form 3539 in accordance with the instructions in § 34.45 (i) of this chapter for postage charged on second-class publications at the per copy rates required by § 34.41 of this chapter, and on Form 3603 for each mailing of other non-metered matter. A receipt shall be issued on Form 3603-A at the time of set-

ting a meter device for the amount collected.

(n) *Accounting for postage and fees.* At the close of each quarter of the calendar year, the postmaster shall enter in the appropriate items of the quarterly postal account the total amount of postage and nonmetered application fees collected under the provisions of this section during the quarter. Postage collected on second-class publications at the per copy rates required by § 34.41 of this chapter shall be included in A/C 013 with other second-class postage. The duplicate copies of the receipts issued on Forms 3603, 3603-A, and 3539, for the postage and fees shall be sent with the quarterly postal account to the regional accounting office.

(R. S. 161, 396, sec. 5, 41 Stat. 583, as amended, secs. 304, 309, 42 Stat. 24, 25, 47 Stat. 647; 5 U. S. C. 22, 369, 39 U. S. C. 273, 273-a)

b. In § 35.5 *Precanceled Government-stamped envelopes and postal cards* make the following changes:

1. Delete paragraphs (b) to (j) inclusive and the note following paragraph (j)

2. Insert new paragraphs (b) (c), and (d) to read as follows:

(b) *Application for permit.* Persons or firms desiring the privilege of using precanceled Government stamped envelopes, precanceled Government postal cards or precanceled postage stamps, shall make application therefor on Form 3623 to the postmaster at the post office where the matter is to be mailed. The postmaster shall issue a permit on Form 3620. The instructions for the permit holder on the form shall be strictly complied with. No fee is required for the issuance of such a permit.

(c) *Conditions governing use of precanceled stamped paper.* Permits for the use of precanceled stamped paper are issued subject to the following conditions.

(1) Precanceled stamps may be used for the payment of postage on matter of

the second, third, and fourth classes, and on post cards. Such stamps may be used only at the office where precanceled. Precanceled stamps above the 6-cent denomination, or lower denominations when the postage exceeds 6 cents, must be overprinted (or hand-stamped) in black ink by the permit holders with their initials and the abbreviations of the month and year, as for example: "A. B. Co. 9-53." Precanceled stamps so overprinted or stamped are acceptable for postage during the month designated, and up to and including the tenth day of the following month.

(2) Any number of pieces may be mailed at one time, regardless of whether they are identical, except in the case of third-class matter mailed under § 34.66 of this chapter, P. L. & R., when each mailing must consist of not less than 20 pounds or 200 pieces and be accompanied with a statement of mailing on Form 3602-PC.

(3) Mailings shall be faced and presented in such manner as to permit easy examination.

(4) Precanceled postage stamps may not be used for the payment of postage on matter mailed in boxes, cases, bags, or other containers specially designed to be reused for mailing purposes.

(5) Precanceled postage stamps shall not be sold by permit holders.

(6) Where Government stamped envelopes or postal cards are precanceled by means of a mailer's postmark, such postmark shall embody the name of the post office and State, the permit number and, in the case of first-class mail, the date of mailing.

(d) *Cancellation of permits.* Permits are subject to cancellation for misuse of if mailings are not made thereunder within a 12-month period.

(R. S. 161, 396, 3921, as amended, secs. 304, 309, 42 Stat. 24, 25, 46 Stat. 264; 5 U. S. C. 22, 369, 39 U. S. C. 365, 370)

[SEAL]

ROSS RIZLEY,  
Solicitor

[F. R. Doc. 53-9945; Filed, Nov. 25, 1953; 8:50 a. m.]

## PROPOSED RULE MAKING

### DEPARTMENT OF AGRICULTURE

#### Production and Marketing Administration

#### [7 CFR Part 914]

[Docket No. AO 245-A1]

#### HANDLING OF NAVAL ORANGES GROWN IN ARIZONA AND A DESIGNATED PART OF CALIFORNIA

#### NOTICE OF HEARING WITH RESPECT TO PROPOSED AMENDMENTS TO MARKETING AGREEMENT AND ORDER

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.) and in accordance with the applicable rules of practice and procedure governing proceedings to formulate

marketing agreements and marketing orders (7 CFR 900.1 et seq.), notice is hereby given of a public hearing to be held in Room 330, Federal Building, 312 North Spring Street, Los Angeles, California, beginning at 9:00 a. m., P. s. t., December 9, 1953, with respect to proposed amendments to the marketing agreement and Order No. 14 (7 CFR Part 914), hereinafter referred to as the "marketing agreement" and "order," respectively, regulating the handling of Naval oranges grown in the State of Arizona and a designated part of the State of California. The proposed amendments have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the provisions of the

proposed amendments, which are hereinafter set forth, and appropriate modifications thereof.

The amendments to the marketing agreement and order which have been proposed by the Navel Orange Administrative Committee, the administrative agency established pursuant to the marketing agreement and order, are as follows:

1. Delete "not less than 2 growers for one grower member not less than 2 growers for 1 alternate grower member" in § 914.22 (c) and insert in lieu thereof "not less than 4 growers for 2 grower members; not less than 4 growers for 2 alternate grower members;"

2. Delete "not less than 4 growers for 2 grower members;" not less than 4 growers for 2 alternate grower members;" in § 914.22 (d) and insert in lieu thereof "not less than 2 growers for 1 grower member not less than 2 growers for 1 alternate grower member;"

3. Add to § 914.29 *Duties* the following new paragraph:

(n) With the approval of the Secretary to readjust the number of producer members or handler members of the Navel Orange Administrative Committee who are nominated pursuant to § 914.22 (c) and (d) respectively. Any such changes shall be based insofar as practicable, upon the proportionate amount of Navel oranges handled by the respective types of marketing organizations.

The Fruit and Vegetable Branch, Production and Marketing Administration, has proposed the following amendments to the marketing agreement and order:

4. Delete the requirement in § 914.22 (b) (c) (d) and (f) that 2 or more members and alternates should be nominated for each position and provide that one or more members and alternates should be nominated for each position.

5. Delete § 914.23 *Selection* and insert in lieu thereof the following:

§ 914.23 *Selection*. From the nominations made pursuant to § 914.22 (b) or from other qualified growers or handlers, the Secretary shall select three grower members of the committee and an alternate to each of such grower members; also two handler members of the committee and an alternate to each of such handler members. From the nominations made pursuant to § 914.22 (c) or from other qualified growers or handlers, the Secretary shall select one grower member of the committee and an alternate to such grower member; also one handler member of the committee and an alternate to such handler member. From the nominations made pursuant to § 914.22 (d) or from other qualified growers or handlers the Secretary shall select two grower members of the committee and an alternate to each of such grower members; also one handler member of the committee and an alternate to such handler member. From the nominations made pursuant to § 914.22 (f) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

6. Delete paragraphs (g) and (h) in § 914.53 *Prorate bases* and insert in lieu thereof the following:

(g) Each week during the marketing season the committee shall compute the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments in each prorate district. On the basis of such computation, the committee shall fix a prorate base for each person who is entitled thereto in each prorate district. Such prorate base shall represent the ratio between the total quantity of oranges available for current shipment in each such district by each person and the total quantity of oranges available for current shipment in each such district by all such persons. The committee shall notify the Secretary of the prorate base fixed for each person and shall notify each such person of the prorate base fixed for him.

7. Delete the first sentence in § 914.54 *Allotments* and insert in lieu thereof the following: "Whenever the Secretary has fixed the quantity of oranges which may be handled during any week in a prorate district, and the committee has fixed prorate bases for persons entitled thereto, the committee shall calculate the quantity of oranges which may be handled by each such person during such week."

8. Make such other changes in the marketing agreement and order as may be necessary to make the entire marketing agreement and order conform with any amendment thereto that may result from this hearing.

Copies of this notice of hearing may be obtained from the offices of the Hearing Clerk, United States Department of Agriculture, Room 1353, South Building, Washington, D. C., or the Field Representative, Fruit and Vegetable Branch, Production and Marketing Administration, Room 1005, 1031 South Broadway, Los Angeles, California.

(48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 20th day of November 1953.

[SEAL] GEORGE A. DICE,  
Deputy Assistant Administrator

[F. R. Doc. 53-9965; Filed, Nov. 25, 1953;  
8:55 a. m.]

### 17 CFR Part 924 ]

[Docket No. AO-225-A4]

#### HANDLING OF MILK IN DETROIT, MICHIGAN, MARKETING AREA

#### NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEP- TIONS WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER, AS AMENDED

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, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with

the Hearing Clerk of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and a proposed order, amending the order, as amended, regulating the handling of milk in the Detroit, Michigan, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business the 20th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

*Preliminary statement.* The hearing, on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, as amended, were formulated, was conducted at Detroit, Michigan on July 27-28, 1953, pursuant to notice thereof which was issued on July 11, 1953 (18 F. R. 4071)

No appearance was made at the hearing by the originator of proposals numbered 5 and 23 relating to the position of producer-handlers under the order. Proposal number 10, relating to the method of determining the Class I price, was not supported by any proponent.

The material issues considered on the record of the hearing related to:

(1) Expansion of the marketing area to include three townships in Oakland County, Michigan;

(2) Revisions relating to the determination of milk to be priced under the order by (a) deleting the Wayne County Department of Health as one of the health authorities qualified to approve country supply plants, (b) raising the qualification requirements for country supply plants and modifying the conditions for maintaining handler plant status, and (c) including a cooperative association as a handler on milk diverted to a non-handler;

(3) A review of the order provisions applicable to other source milk;

(4) Reclassification of fluid skim milk from Class I to Class II;

(5) Changes in the pricing provisions which would (a) alter the location adjustment schedule applicable to milk moved for Class I use and to producer milk delivered to country plants, (b) apply location adjustments on milk disposed of as Class I from plants located within the marketing area but more than 34 miles distant from Detroit City Hall, (c) extend the butter-powder credit on Class II milk to all months of the year, and (d) allow a transportation credit on Class II milk necessarily moved from a receiving plant to a manufacturing plant;

(6) Revision of certain of the rules for establishing and applying bases under the base-rating plan for encouraging level production; and

(7) Making certain administrative revisions of order language.

*Findings and conclusions.* The following findings and conclusions on the issues decided herein are hereby made upon the basis of the record of the hearing:

(1) *Marketing area.* The marketing area should not be extended to include Highland, Milford, and Lyon Townships in Oakland County.

Inclusion of the additional area was proposed by a distributor who buys his milk in bottled form from a Detroit handler and sells it in a general area which includes the three townships. Other Detroit dairies also serve the townships, and it was testified that 80 percent of the milk distributed in the area was regulated under the Detroit order. The remaining 20 percent of sales originate from handlers primarily associated with the Flint market, there being no milk receiving and bottling plants in the three townships.

Flint is a sizable population center and milk distributors there are not under Federal order regulation. Unless there was some change in the pattern of distribution, extending the Detroit marketing area to include the townships would bring the affected Flint handlers under the Detroit order. As regulated handlers, these distributors would be in competition with unregulated distributors in their primary sales territory. It is concluded that the marketing area should not be extended to include the three townships.

(2) *Milk to be priced.* The Wayne County Department of Health should be removed from the list of health authorities whose approval is one element in the qualification of a country supply plant, i. e., one from which milk is supplied to a distributing plant. No other change should be made in the requirements for the qualification of the operator of a supply plant as a handler under the order. However, a cooperative association should be a handler with respect to milk diverted to a non-handler.

Producers proposed that the portion of the definition of a handler which relates to the operator of a "supply" plant be modified in several important respects. A "supply" plant, also commonly referred to as a "country" plant, is one from which the requisite percentages of milk are shipped, during specified months, to plants from which milk is disposed of as Class I on a route in the marketing area. The latter are referred to as "distributing" or "city" plants. The present standard is that a supply plant be approved as a source of fluid milk by one of the 5 named health authorities and that 10 percent or more of the plant's dairy farm supply of milk be moved to a distributing plant in each of the months of November and December.

One proposed change would remove the Wayne County Department of Health from the list of health authorities whose approval is one element of handler qualification. The other proposals would alter the minimum shipping requirements for the attainment of handler status and participation in the marketwide pool. It was proposed that 50 percent or more of a supply plant's supply of milk be required to be shipped to a distributing plant in each of the 4 months October through January that a new plant not be qualified until after the second month in which it had

shipped not less than 50 percent of its supply and that after qualification had been established, a proprietary handler could maintain such qualification on the basis of the combined receipts and sales at all plants operated by him, while a cooperative association could similarly combine receipts and sales at all plants (cooperative or proprietary) where the movement of milk was under the direction of such association.

The Wayne County Department of Health is a factor in qualifying certain of the Detroit handlers. These include handlers operating supply plants and distributing plants. In the case of distributing plants, the approval of health authorities is not specified. Instead, the order relies upon the provision requiring that milk distributed in any part of the marketing area must be approved by the health authority having jurisdiction in the particular area of distribution. Milk is distributed in the marketing area from several plants which serve territory in which the Wayne County Department is the applicable health authority.

Effective November 1, 1952 the Wayne County Department of Health was added to the list of those health departments whose approval would be acceptable for determination of qualification as "supply plant" handler. The supply plant handler definition does not specifically enumerate health requirements applicable either to farms or to milk plants. It does name the specific health authorities whose inspection standards are substantially uniform and whose operations provide a basis for positively identifying the producers, plants, and milk which meet the sanitary requirements for fluid use. The order, in turn, allows the established requirements and procedures of the Health Departments to determine who are acceptable as producers, and to assure that milk from inspected sources only is used by the distributing plants for fluid purposes in marketing areas.

It was testified that the Wayne County Health Department representatives did not make actual inspections of all producers approved by them. That Department accepted inspections conducted by the Michigan Department of Agriculture, though Wayne County made spot checks of these inspected producers. Testimony with respect to administrative procedures of the Wayne County Health Department also revealed that until very recently no recording system had been maintained listing producers who had been either directly or indirectly approved by that Department, and consequently there was no means for verification of the individual shippers, nor of the total number of shippers who were producers for a particular supply plant for the Detroit market. The Wayne County Department, further, did not require that milk to be used for fluid purposes be handled in a plant entirely separated from a building in which milk for manufacturing uses was received. Other held authorities named by the Order do require separate buildings as a means of insuring the identity of inspected milk.

The handler definition relating to the operator of a supply plant sets forth the

criteria for determining an operator's status under the marketwide pool. In addition to its being approved by a qualifying Health Department, a supply plant must furnish, as Order No. 24 is presently written, 10 percent of its supply of milk to the market in November and December. The proposed revision would require 50 percent of a plant's supply during October through January rather than 10 percent in two months. A plant which meets the minimum shipping requirements becomes fully regulated under the order, and farmers shipping milk to such a plant achieve the status of producers and participate in the equalization fund. The supply plant definition should, as nearly as possible, include any plant which is part of the essential and regular source of supply for the market, at least in the fall months. The late fall months constitute the period of lowest milk production. Class I sales, however, are essentially the same in all months of the year. Under these conditions the fall months are the critical ones in determining adequacy of supply. Supply plants which are called upon infrequently, or for insignificant proportions of their milk supply, and who commonly market their milk in outlets other than the Detroit market need not be fully regulated under the order, and should not be permitted to participate in the equalization pool.

Solely from the viewpoint of measuring regularity, supply plant requirements should pertain primarily to the service which the plant is presently rendering to the market. Otherwise, conditions may so change that a plant which was once a regular source of supply, has shifted its outlets to such an extent that it serves the market less well than plants which may be available as new sources. Because the total supply of milk in the market varies from year to year, the level of required shipments must be sufficiently low to avoid disqualifying plants during a fall season when supplies per producer may be larger than normal in relation to sales. On the other hand, the supply plant standards should be sufficiently definitive to avoid including in the pool handlers whose principal outlets for milk are in other markets, either for fluid or for manufacturing uses.

In several important respects the producers' proposals fail to fulfill the fundamental purposes of supply plant criteria as well as those presently in effect.

Both the present and the proposed supply plant definitions stipulate percentages of supply which must be "moved to a plant" from which distribution is made in the marketing area. In order to maintain pool status, supply plants may make shipments at times when adequate supplies are already available at closer locations. As a result, extra transportation costs are incurred on the milk shipped in, and it may even be necessary to move milk from the distributing plants back out to the country for manufacture. In fact it was testified that such out-of-position shipments occurred during November and December, 1952, when milk supplies were unusually large for that season of

the year. However, the scale of such shipments and the likelihood of their recurrence are substantially less under the existing requirement of 10 percent for two months than under a requirement of 50 percent for four months.

A further shortcoming of the proposed supply plant standards is that the conditions for initially attaining pool status are markedly more difficult than the subsequent maintenance of status. This difference arises from two aspects of the proposal. One is that each plant must qualify initially as an individual plant, whereas any plant which is a member of a proprietary or cooperative group of supply plants will be able to maintain status (subsequently) when the group as a whole sends 50 percent of total receipts into one market.

The second source of difference is that during the initial qualifying period, the plant does not attain status until after it has shipped 50 percent of its supply for two full months. (This requirement was tempered, through testimony by the proponent, to the extent that it becomes inoperative in months when total market supplies of producer milk were less than 105 to 107 percent of Class I utilization.) The less stringent requirements for maintaining status than for qualifying initially were proposed because the proponent cooperative association guarantees its members a market for their milk and therefore desires to maintain the pool status of all plants at which it has members. It will be recognized that this objective involves other considerations than the limited goal of designating pool plants strictly in accordance with their current service to the market.

A third problem in the consideration of the supply plant proposals is the difference in the qualifications applicable to independent plants as compared with those applicable to plants which are one of a group which is either operated by a handler or whose movements of milk to distributing plants is under the direction of a cooperative association. Some aspects of this proposal were reviewed in the preceding paragraph. Under the present order each handler, proprietary or cooperative, may combine operations at all his plants into a single report. If, instead, the order required each plant to be qualified individually, a handler could restrict shipments from his nearby plants to the extent necessary to draw the requisite quantities from the more distant plants, so long as the total receipts by his own or other distributing plants were sufficient to keep his group of supply plants qualified. Since, in these circumstances, a handler could meet the shipping requirements, it is reasonable to permit him to combine his plant reports and to draw his entire supplies from the least distant country supply plants. The proposal would allow for the extending of the permission to combine supply plants for the purpose of maintaining pool status to all plants at which a cooperative association directs the movement of milk. This proposal rests on the same logic as the combining of plants by a single handler, since such an association can direct the movement of milk from any particular plant, at will.

The extending of the concept of supply plant groups or systems, however, further demonstrates the weakness of relying on shipping requirements as a basis for market need. These systems can keep in the pool plants from which milk may never be needed for fluid purposes in the marketing area. At the same time any supply plant not in such a system would have to demonstrate a continued high degree of need for its milk in the market. A more thoroughgoing means of determining pool status on the basis of need would be to allow credit only on supply plant milk actually needed by distributing plants for Class I use. Conceivably this might be accompanied by a requirement that shipments from the nearest supply plants be allocated to Class I before allowing credit to more distant supply plants. Any such standards would also be more equitable as between single plants and groups of plants.

The comparatively moderate shipping requirements in the present order reflect the fact that over a period of many years the market structure has been essentially related to the supplying of milk for fluid use, without any extensive participation in pooling arrangements by plants with other primary interests. The potentialities of pool riding were discussed at length at the hearing and a present instance of the type of participation which the proponent expressly desired to prohibit was revealed. However, the fact that in recent months supplies have been in balance with Class I sales to the extent that the Class I supply-demand price adjustment has been inoperative, indicates that the pool has not thus far been unduly diluted. For the reasons heretofore stated, the proposed changes would create serious inequities between individual and group supply plants and would tend to encourage uneconomic shipments of milk without providing the possibility of more than a partial solution to the pool plant problem.

It is concluded that no change should be made in the standards applicable to the participation of supply plants in the marketwide pool. If the present and potential threats to the integrity of the pool are considered sufficiently urgent to merit developing a definition based on Class I need rather than on the basis of shipments, it might be desirable to consider such proposals at a subsequent hearing.

It was proposed that the definition of a handler should be extended to include a cooperative association with respect to milk customarily received by a handler who operates a plant, but which milk is diverted to a non-handler plant for the account of the association. The primary proponent of this proposal, a cooperative association, has no plant facilities and therefore is not a handler under other provisions of the order. The cooperatives which have been in the market since inception of the order are handlers by current order definition. At present, a handler to whom members of this association ship milk may divert the milk for such handler's account and thereby retain the members' status as producers. In this event the handler remains ac-

countable for the payment of Class Prices on the milk. The proposed amendment, however, gives such a cooperative association direct authority to divert the members' milk, and at the same time makes the association responsible for payments on such milk. A similar provision is included in many of the other Federal orders to cover similar contingencies.

One proposed amendment to the handler definition was designed to exclude from regulation a plant located within the marketing area, but from which milk is neither distributed in the marketing area, nor furnished to another plant from which milk is so distributed. This proposal was identified as number 3 in the Notice of Hearing. No such amendment is needed to provide this intended exemption since the definition of a handler is in terms relating to area of distribution rather than to location of plant.

(3) *Other source milk.* The proposed changes in pool plant requirements prompted a review of the order provisions applicable to milk obtained from sources other than pooled supplies. Even though no changes in the plant qualifications are recommended herein, it is appropriate to review the position of other source milk in the light of experience gained during nearly two years of operation of the order.

One category of other source milk consists of that which is priced under other Federal orders. Any handler who is subject to another order and who distributes more Class I milk under such other order than in the Detroit marketing area is exempt from all but the reporting provisions of the Detroit orders. The problem herein considered relates, therefore, to milk from sources other than those under Federal regulation.

The allocation of other source milk in determining the use classification of producer milk was not under review at the hearing. The order provides that producer milk be allocated first to the Class I utilization of any handler who has received both producer milk and other source supplies during any given reporting period.

The prices paid by a handler for other source milk are not, however, regulated by the order. Testimony revealed that, in practice, there has been comparatively little unpriced milk obtained by the regulated handlers. All plants from which appreciable quantities of milk are distributed as Class I in the marketing area are fully regulated. (Distributors of insignificant quantities are exempt, and distributors whose principal volume of sales are in another Federal order market remain regulated under such other order.) Any dairy farmers delivering to distributing plants are, therefore, "producers" and only such supplemental supplies of non-producer milk as might be obtained by such plants would be other source. The qualification standards for supply plants are moderate, and sufficient plants have qualified to keep the market as a whole well supplied, thereby minimizing any need for obtaining milk from other sources. It would be possible under the order for individual handlers to carry

only a partial supply of producer milk, and depend upon other sources for supplementary supplies. To date, however, producer milk made available by cooperative associations or other handlers has been the principal source of supplemental milk for this type of handler. The producers' proposal to require a supply plant to complete two months of shipment before qualifying as a handler's plant would designate milk shipped during the qualifying period as an "other source" supply.

Milk obtained from other than regulated sources is not priced under the order. The conditions under which such unpriced milk has been or could be drawn upon to supply Class I sales in the marketing area were reviewed in the preceding paragraph. If any handler was able to obtain a price advantage on such milk, he would be in a favorable position relative to the handlers buying producer milk. This in turn would force other handlers to seek the same type of advantage, in much the same fashion as seasonably excess milk tends, in the absence of an order or other effective check on utilization by all handlers, to be used by non-participating handlers to obtain a buying advantage over handlers who are purchasing milk under a classified price plan.

Extending the classified price plan to all handlers in the marketing area prevents any one of them from achieving a buying advantage on regulated milk. Similarly, the classified price plan must be protected from the possible use of unpriced milk from unregulated sources. Since minimum prices are not established for non-handlers, the alternative is to levy a charge which removes any advantage there may be in the purchase of other source milk.

The order specifies that each handler who had other source milk allocated to Class I shall pay to the producer equalization fund each month an amount computed by multiplying the hundred-weight of milk so allocated by the difference between Class I and Class II prices for the month. This is the amount which is considered necessary to eliminate any advantage in the purchase of the cheapest available supplies of other source milk. It is an objective, single rate of payment, applying to any purchase of other source milk. The fixed rate will still leave handlers an incentive to seek out the cheapest sources of any unregulated milk which they may require. However, they will not be able to achieve a buying advantage over handlers who rely upon producer milk.

It was testified that supplies of milk suitable to fluid use are available at all seasons of the year. Alternative outlets for such milk (including supplies at plants in process of qualifying) would generally be the manufacture of dairy products. The seller of such milk could be expected to make it available at little or no margin over its value for manufacture, plus a charge for such plant services as receiving, cooling, and loading out, and for transportation. Similar charges are customarily added to the Class I price by supply plants selling to distribution plants, so the difference be-

tween the Class I price and the manufacturing value remains an appropriate measure of the price advantage on such purchases of other source milk. The Class II price under the order is the average of prices paid to farmers for milk at a representative group of local milk manufacturing plants. It therefore constitutes an appropriate measure of the level of prices paid for manufacturing milk, and the difference between the Class I and Class II prices is an appropriate rate of compensatory payment.

Several alternative means of determining an appropriate rate of compensatory payment on other source milk were discussed at the hearing. One of these was to determine the actual price paid by the Detroit handler for such milk. However, it was shown that this technique has serious administrative limitations. The prices at which inter-plant transactions occur could be purely nominal, whether the purchase and sale took place between plants under a common ownership or between unrelated plants. Also, it would be difficult, if not impossible, to determine what proportion of the transfer price represented the value of milk delivered f. o. b. the originating plant and what portion was a handling and transportation cost, or whether such charges were reasonable. The scope of the order is strictly confined to the pricing of milk delivered by farmers at the f. o. b. plant level; resale prices applicable to inter-plant transfers are not regulated.

A second suggestion for determining the rate of compensatory payment was to use the difference between the Class I price under the order and the prices actually paid to dairy farmers at the unregulated plant. It is not possible, however, to make such a determination on a basis entirely comparable with order pricing. Any premiums paid to a portion of the farmers would constitute part of the farm price paid at the unregulated plant, whereas a regulated plant must pay at least the order prices to all shippers. The lack of verification of weights and tests, possible patronage dividends at cooperative plants, and possible nominal rates of charge for transportation and other services further obscure any comparison of prices paid. A further problem is that the unregulated plant commonly pays a blend price. Unless a complete audit of such a plant's class utilization is made, no valid comparison of payment rates to the dairy farmers with order prices paid to producers is possible. Complete audit of each plant from which an occasional shipment of other source milk may be obtained is manifestly impracticable in so large a market as Detroit.

A third possibility is to set the payment rate at the difference between the Class I and the uniform price payable to producers under the order. This procedure depends upon the premise that unregulated plants are in such a closely competitive situation that they pay the blend price. The testimony was, however, that manufacturing values rather than blend prices represent the opportunity cost or alternative value of milk at unregulated plants.

(4) *Classification.* The proposal to classify skim milk sold in fluid form as Class II rather than as Class I should not be adopted.

Testimony on this proposal was based upon the competition afforded to sales of fluid skim milk by nonfat dry milk solids which are now widely sold in home-use packages by grocery stores. No specific evidence was presented to show the degree of this competition. It was pointed out, however, that not all the nonfat solids sold at retail are used to reconstitute skim milk for fluid consumption; they are also used for cooking purposes in the home. Data on the disposition of fluid skim milk by handlers under the order are published regularly by the Market Administrator in the "Detroit Market Bulletin." Official notice is hereby taken of such data. Sales of skim milk show a marked upward trend, with a seasonal peak during the summer months. Sales of fluid skim during the first six months of 1953 were 23 percent above sales for the corresponding months of 1952. It is indicated from this that the possible substitution of dried nonfat solids for fluid skim has not yet reached the point of reducing the sales of fluid skim milk. Furthermore, so long as fluid skim milk is required by health authorities to be obtained from inspected sources, such quantities as are sold must continue to be priced at such level as will encourage producers to supply inspected milk.

(5) *Class prices.* The rate of the location adjustments which applies as a credit to handlers on milk moved for Class I use and to milk delivered by producers to country plants should progress indefinitely instead of reaching a maximum of 26 cents, no location adjustment should be allowed on milk disposed of as Class I from plants located within the marketing area, the Class II price provisions should not be changed, and no credit should be allowed on such quantities of Class II milk as it may be necessary for a handler to move from the point of delivery by producers to manufacturing plants.

The proposal to change the schedule of location adjustments was designed primarily to relieve procurement difficulties which have arisen subsequent to the amendments of November 1, 1952. The schedule of location adjustments in the original order reached a maximum differential of 21 cents which applies to any distance greater than 97 miles. The amendment extended the schedule at the rate of one cent per 8 miles to a maximum of 26 cents for all plants located more than 137 miles from Detroit City Hall. The proponents who testified operate plants in the 23- and 25-cent zones. Prior to the November, 1952 amendment, the 21-cent differential applied to both plants, and producers delivering to these plants received from 1 to 3 cents less than producers delivering to two competitive plants closer to Detroit. Currently, these producers receive 3 to 7 cents less, and the farm-to-plant haulers have experienced a corresponding additional disadvantage of 2 cents per hundredweight at one plant and 4 cents at the other in territories where produc-

ers are in a position to ship to the plants closer to Detroit. It was proposed by the handlers operating plants in the 23- and 25-cent zones that the present zone schedule be continued through the 20-cent zone, the 97-mile limit, beyond which the location adjustment would increase at the rate of 1 cent per 18 miles instead of 1 cent per 8 miles.

It must be recognized that a country plant at a given distance from the market will always be at a disadvantage in competing with a plant closer to market for the milk supply of farmers living in the territory between the two plants. The normal competitive relationship between such plants results from differences in the long-haul costs from plant to market. The primary function of a country receiving plant is to assemble small lots of milk from farmers into tank lot quantities for economical shipment to market. It follows that the farmer-patrons at each plant can be paid the f. o. b. market price less the tank-lot transportation cost. This cost increases with distance and is reflected in the form of producer location differentials under the order. The differentials cannot be arbitrarily altered to accommodate the farm-to-plant haulers at a particular plant without inviting uneconomic shifts of milk supplies.

An alternative proposal was offered by Michigan Milk Producers Association. It modified the zone schedule for distances over 51 miles by using a rate increase of 1 cent for each additional 10 miles. This later proposal would set 21-cent and 22-cent rates at the former proponents' plants, but would leave the plants involved at a disadvantage of 2 to 6 cents relative to competitive plants located closer to the marketing area. It was asserted that the recommended lower schedule of rates developed in the alternative proposal was based upon over-all operating experience, but no specific or general cost data were presented which might permit cross-examination or comparison with similar data of other handlers in the market.

Both proposals for changing the location adjustment schedule contained a provision to extend the rate schedule without limit, replacing the present provision establishing a maximum differential of 26 cents applicable to all locations beyond 137 miles from Detroit City Hall. Subsequent to the amendment setting 137 miles rather than 97 miles as the distance beyond which the differential ceased to increase, one plant situated 165 miles from the City Hall has been added to the market supply, and additional prospective plants are located at distances of 175 and 247 miles. Handlers shipping milk from these greater distances should receive location credits commensurate with the extra transportation costs involved on milk moved to the marketing area for Class I purposes. Also, producers delivering to such distant plants should not receive as large a rate of return from the marketwide pool as producers located closer to market since their milk is available to the market only at a higher transportation cost. To properly price milk at the more distant locations, the

present rate of 1 cent per each additional 8 miles should progress in like manner to include any distance at which a handler's plant may be qualified.

Handlers whose plants are located within the marketing area but more than 34 miles from Detroit City Hall repeated the proposal originally made at the promulgation hearing to the effect that a location adjustment be allowed on milk received from producers at such plant and disposed of as Class I.

No testimony was offered by way of exception to the original basis for denying this proposal, namely that all portions of the marketing area are dependent upon the entire production area for a year around supply of milk and that the prices necessary to attract an adequate supply of milk for the entire area should apply to all parts of the area.

Further, testimony and questions at the hearing showed that the proposal would create substantial differences in the cost of milk between handlers distributing in the same territories. Two handlers whose principal sales are in the Ypsilanti and Ann Arbor area would not receive the proposed location credit because their plants are located slightly less than 34 miles distant from Detroit City Hall. Also, a handler whose plant is located in Detroit and who distributes significant volumes of milk in the same territory as one of the proponents would not receive the credit.

The proposed change in the method of establishing the Class II price which was considered at the hearing would extend the credit allowed on butterfat and skim milk manufactured into butter and nonfat dry milk solids to all months of the year instead of confining it to April, May, and June. A similar proposal was considered at the hearing of February 20, 1953. The record of that hearing and the decision filed by the Secretary July 24, 1953 were incorporated in the current record.

The significantly new aspect of the problem considered at the July hearing was a suggestion by one of the proponents that butterfat and skim milk used to manufacture butter and nonfat dry milk solids should always be priced at a butter-powder formula price, regardless of whether such price were above or below the local plant price. This modification of the proposal was advanced in response to questions; it was not included in the notice of hearing nor in the direct testimony of any proponent of the proposal for extending the period of applicability of the butter-powder credit.

It was stated that the modification should be adopted only if the "make allowance" in the currently effective butter-powder credit was increased to reflect operating costs. The make allowance was considered at the previous hearing and a review of that record and of the current record do not alter the previous conclusions regarding the make allowance.

One other aspect of the proposed modification merits attention. Many handlers dispose of all or a portion of their Class II milk by selling it to unregulated manufacturing plants. Some of

these are equipped to manufacture butter and nonfat dry milk solids. However, whether they are specialized butter-powder plants or multi-purpose plants, it is not to be expected that they will pay significantly more than the competitive price for milk. Therefore it is unlikely that a regulated handler would be able to obtain a butter-powder price for Class II milk shipped to such a plant for conversion into butter and nonfat solids in periods like the past several months when butter-powder values have been substantially in excess of condensery pay prices. This would create a serious limitation on the ability of some handlers to dispose of Class II milk.

Handlers' proposals for a transportation credit on Class II milk necessarily moved to a manufacturing plant were also considered at the hearing of February 20, 1953, and the conclusions previously reached are applicable to the additional evidence received at the recent hearing.

(6) *Base rules.* The base rules should be revised to provide that: (1) A producer who delivers milk on less than 122 days during the base-forming period (but who does not lose his base by reason of failure to deliver for 45 consecutive days) shall have a daily base beginning on the following February 1 equal to his total deliveries of milk divided by 122; (2) bases may be combined jointly upon formation of a bona fide partnership, and jointly held bases may, upon termination of the joint holding, be divided among the joint holders as specified in writing to the market administrator without requiring that the transfer be to a person who maintains a herd on the same farm; (3) a producer who stands to lose his base as a result of fire or windstorm damage of sufficient destructiveness to result in loss of the health permit shall retain his old base for a period not to exceed 6 months; and (4) notification of intention to establish a new base may specify the month, the first day of which is to begin the base-forming period; however the day will be not earlier than the first day of the months in which the notification of intention is received by the market administrator.

The order now provides for a base, to begin on the following February 1, for any producer who delivers milk on as many as 122 days during the base-forming period of August through December. However, a producer who delivers on fewer days has no base and is paid a base price on specified percentages which vary seasonally until he has completed the 3 months' shipments which establish a new base. It is logical that such a producer be allowed a base, to become effective on the following February 1, equal to his deliveries during the base-forming months divided by 122. As an alternative, a producer continues to have the option of establishing a new base during a 3-month period.

The rules presently applicable to joint holdings of bases require that any transfer of base upon termination of the joint relationship be only to persons who maintain a herd on the same farm. In

all other respects the base rules are in terms of the producer's identity rather than the location of the producer's herd or farm, and it is desirable to allow jointly held bases to be divided between the holders in any acceptable way agreed to by them. Also, a rule should be inserted to permit the combining of bases upon the formation of bona fide partnerships.

The provision for loss of base upon the producer's failure to deliver milk for 45 consecutive days should be modified in the case of producers who suffer a complete loss as a result of fire or windstorm. It was proposed that such a producer be allowed to keep his old base for one year, but it appears that a period of 6 months should be sufficient to accommodate any producer who takes prompt action to restore his barn, even allowing for delays resulting from winter weather. It was testified that completeness of loss could be objectively measured by revocation of the producer's health permit.

In practice, producers are able in some instances to notify the market administrator of intention to establish a new base farther in advance than is contemplated by the order language. Obviously, they should be allowed to do so; the essential limit on such notification is that it not be received after the close of the first month in which the new base is to be established.

(7) *Administrative provisions.* The several administrative changes proposed by the Dairy Branch, Production and Marketing Administration, should be adopted.

The skim milk equivalent of concentrated fluid products should be specifically defined as Class I utilization. One type of these "concentrated products" is made by partial evaporation of fluid skim milk. The original skim milk is obtained from sources approved for fluid use and the producers supplying such skim milk should receive a Class I price for the original weight of skim milk rather than for the weight of the concentrated product. A second type of concentrated products is made adding condensed skim milk or nonfat dry milk solids to such Class I items as fluid skim milk, buttermilk, and chocolate drink. The health regulations require that handlers in the Detroit market draw upon producer milk for these additional solids, and the skim milk equivalent should be classified as Class I. In accounting for the additional solids, the skim milk equivalent is listed as a receipt of other source milk. Under the allocation procedure such a receipt is subtracted first from any Class II utilization by the handler, thereby raising the classification of an equivalent quantity of producer skim milk from Class II to Class I.

The definition of Class II utilization should be modified to account for the skim milk and butterfat in sterilized flavored milk drinks on a "used to produce" basis rather than on a "disposed of as" basis. The milk furnished to a plant making such drinks can be accounted for readily whereas the ultimate disposition of the drinks is not part of the dairy enterprise sales records.

The Class II definition should also be revised to specify the fat content which

constitutes the demarcation between milk and cream, that dumping of skim milk be subject to specific authorization by the market administrator, that dumping be eliminated as a Class II disposition of butterfat, and that eggnog be designated as a Class II utilization. The dividing line used to distinguish between milk and cream has been to consider as "milk" all items testing less than 10 percent butterfat and as "cream" those containing 10 percent or more of fat. Dumping can be verified only by witnessing the action, since no independently verifiable record is available for audit purposes. There is no longer any need to include butterfat as a dumping utilization since Class I and Class II butterfat prices are now identical. Eggnog was not originally named as a Class II utilization but, since the ingredients can be obtained from uninspected sources which are available at the Class II level of prices, eggnog should properly be classified as Class II.

The provision for transferring milk in bulk from a cooperative plant to a handler's bottling plant at the base price should not be limited to cooperative plants from which no milk is disposed of on a route(s) in the marketing area since the limitation is not an essential element of such accounting.

Any amount due to the pool on other source milk used as Class I should be part of each handler's regular settlement with the pool rather than treated as a separate payment to the producer equalization fund later in the month. The final payment by the handlers and amount received by producers would not be affected by the change. However, since the quantities of other source milk utilized as Class I are already known as part of the handler's utilization reports which are submitted on the fifth working day of each month, payments on such milk can be most expeditiously handled as part of the regular settlement procedure.

For purely administrative reasons the location adjustment credit should apply to the handler operating a distributing plant rather than to the handler operating a country supply plant from which milk is supplied to distributing plants. The credit is allowed only on milk actually utilized as Class I. The supply plant must obtain such information from the distributing plant receiving the milk. Frequently several distributing plants receive milk from a single supply plant and vice versa, and any change in utilization at the distributing plant which may be revealed by audit involves corresponding changes in location adjustment credits. The proposed change would obviate these several difficulties and thereby facilitate both the accounting procedures under the order and the arrangements between supply plants and distributing plants.

The amount to be deducted in computing the uniform price and the uniform base price for use as a revolving fund in the producer-equalization fund should be raised to between 6 and 7 cents instead of the current provision of between 4 and 5 cents. This provides a revolving fund since not less than half the unobligated balance in the pro-

ducer-equalization fund is added to the computation of the value of producer milk each month. The larger revolving fund is necessary to cover the normal lag between payments and receipts in this market.

*General findings.* (a) The proposed marketing agreement and the order 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 of and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

*Rulings on proposed findings and conclusions.* Briefs were filed on behalf of producers and handlers. The briefs contained proposed findings of fact, conclusions and argument with respect to the proposals discussed at the hearing. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that such suggested findings and conclusions contained in the briefs are inconsistent with the findings and conclusions contained herein the request to make such findings or to reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions in this decision.

*Recommended marketing agreement and order as amended.* The following amendments to the order, as amended, are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The proposed marketing agreement is not included because the regulatory provisions thereof would be the same as those contained in the order, as amended, and as proposed to be further amended:

1. In § 924.6 (b) delete the phrase "or of Wayne County"
2. Add a paragraph "(c)" to § 924.6 as follows:

(c) A cooperative association with respect to milk customarily received by a handler, as described under paragraphs (a) or (b) of this section, which is diverted to a person not a handler for the account of the association.

3. In § 924.41 (a) insert following the phrase "all skim milk" the following: "(including the skim milk equivalent of concentrated products)"

4. Amend § 924.41 (b) to read as follows:

(b) Class II utilization shall be all skim milk and butterfat (1) disposed of

for fluid consumption as sweet or sour cream or any mixture of cream and milk or skim milk containing 10 percent or more of butterfat; (2) used to produce sterilized flavored milk drinks, ice cream or ice cream mix, cheese (including cottage cheese) dried whole milk, nonfat dry milk solids, evaporated or condensed whole or skim milk, sweetened or unsweetened, disposed of in bulk or in hermetically sealed cans, eggnog, butter; (3) disposed of as livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion within 18 hours) by the market administrator; (4) in shrinkage of producer milk up to 2 percent of receipts from producers; or (5) in shrinkage of other source milk.

5. In § 924.43 (c) delete the phrase "from which no milk is disposed of on a route(s) in the marketing area."

6. In § 924.46 (a) change the reference to "§ 924.41 (c) (3)" to read "§ 924.41 (b) (4)"

7. In § 924.60 (a) change the phrase "Subject to paragraphs (c)" to read "Subject to paragraphs (b) and (c)" and change the reference to "§ 924.46 (c)" to read "§ 924.46 (e)"

8. Amend § 924.60 (c) to read as follows:

(c) A handler who operates a plant as described in § 924.6 (b) (or § 924.6 (a) and located more than 34 miles by shortest highway distance from the boundary of the market area) and who dispose of, from such plant for Class I utilization (other than to a handler) milk received from producers, and a handler who receives at a plant described in § 924.6 (a) producer milk moved in bulk from a plant described in § 924.6 (b) which milk is utilized as Class I (prorating to such milk the utilization of all producer milk received at the plant) shall receive a credit with respect to milk so disposed of or so received and utilized at a rate determined by the market administrator as follows:

	<i>Rate per hundred- weight</i>
Shortest road distance from Detroit City Hall:	
More than 34 miles but not more than 49 miles.....	\$0.14
More than 49 miles but not more than 57 miles.....	.15
Add 1 cent for each 8 miles or fraction thereof over 57 miles.	

9. Amend § 924.62 (b) to read as follows:

(b) Subtracting not less than 6 cents nor more than 7 cents.

10. In § 924.64 (e) delete the first sentence and substitute therefor the following: "Subtract not less than 6 cents nor more than 7 cents."

11. Add a paragraph (e) to § 924.70 as follows:

(e) A producer who does not forfeit his base pursuant to § 924.71 (c) but who fails to deliver milk on at least 122 days of the August 1 through December 31 period shall have his base for the 12 months beginning the following February 1 computed by dividing the total pounds shipped during the period by 122.

12. Amend § 924.71 (b) (2) to read as follows:

(2) Bases may be held jointly and if such joint holding is terminated the base may be transferred as specified in writing to the market administrator.

13. Add a subparagraph (3) to § 924.71 (b) as follows:

(3) Two or more producers with bases may combine those bases upon the formation of a bona fide partnership.

14. Amend § 924.71 (c) to read as follows:

(c) A producer who does not deliver milk to any handler for 45 consecutive days shall forfeit his base except that a producer who suffers the complete loss of his barn as a result of fire or windstorm may retain his base without loss for six months.

15. In § 924.72 insert after the phrase "first day of the month" the phrase "specified but not earlier than the first day of the month"

16. Delete the period at the end of § 924.10, and add the following: "and shall include the skim milk equivalent of concentrated products classified as Class I pursuant to § 924.41 (a)"

Filed at Washington, D. C., this 20th day of November 1953.

[SEAL] GEORGE A. DICE,  
Deputy Assistant Administrator

[F. R. Doc. 53-9956; Filed, Nov. 25, 1953;  
8:52 a.m.]

## [ 7 CFR Part 927 ]

[Docket No. AO-71-A-26]

### HANDLING OF MILK IN NEW YORK METROPOLITAN MILK MARKETING AREA.

#### DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED ORDER AMENDING ORDER, AS AMENDED

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, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900) a public hearing was conducted, beginning at Utica, New York on November 18, 1952, pursuant to notice thereof issued on November 10, 1953 (18 F. R. 7249) upon proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the New York metropolitan milk marketing area.

The material issues presented on the record of the hearing are concerned with:

1: Amendment of the order so that the computation of prices established for Class I-A milk for the month of December 1953 and subsequent months will not reflect the reduction in the volume of milk utilized for fluid use (in Classes I-A, I-B, and I-C) during October 1953 resulting from a strike of dairy plant employees and drivers, and

2: The need for prompt action necessitating omission of a recommended decision and opportunity for exceptions.

*Findings and conclusions.* The following findings and conclusions on the material issues are based upon the evidence in the record of the hearing:

(1) It is concluded that § 927.40 (a) of the order should be amended to prevent the distortion in Class I-A prices for December 1953 and ensuing months which otherwise would occur as a result of a strike of dairy plant employees and drivers which occurred during the last week of October 1953.

The strike resulted in the utilization of approximately 32 million fewer pounds of October pool milk in fluid form (Classes I-A, I-B, and I-C) than reasonably may be expected to have been so utilized if there had been no strike. The percentage of October pool milk reported by handlers to have been utilized in Classes I-A, I-B, and I-C was 54.7. Addition of the additional 32 million pounds, which it is estimated would have been so utilized if the strike had not occurred, results in a utilization percentage for October of 60.5.

This latter figure (60.5) is the utilization percentage for October 1953 which should be used in calculating monthly prices for Class I-A milk beginning with the price for December 1953 pursuant to the Class I-A pricing formula contained in the order. The reduction in the sale of Class I milk which occurred during the period of the strike is the result of an abnormal market situation which the Class I-A pricing formula is not designed to reflect. Use of the actual utilization percentage under these circumstances in computing Class I-A prices for December and ensuing months would tend not to reflect supply and demand conditions in the market accurately.

(2) The due and timely execution of the function of the Secretary under the act with respect to action on Issue No. 1 imperatively and unavoidably requires the omission of a recommended decision by the Assistant Administrator, Production and Marketing Administration, and the opportunity for exceptions thereto.

Failure to make the attached amendment order effective by not later than December 1, 1953 would defeat, to a significant degree, the purpose of such amendment. The preparation, filing and publication of a recommended decision, with opportunity for exceptions thereto, would preclude the making of such amendment effective by December 1, 1953 because of the time necessarily required for completion of such procedural steps. Accordingly, those procedural steps should be omitted in this instance.

*General findings.* (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further 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 of and demand for milk

in the marketing area and the minimum prices specified in the proposed marketing agreement and the order, as amended, and as hereby proposed to be further 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 proposed marketing agreement and the order, as amended and as hereby proposed to be further amended, will regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in the said marketing agreement upon which a hearing has been held.

**Determination of representative period.** The month of July 1953 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, amending the order, now in effect, regulating the handling of milk in the New York metropolitan milk marketing area, in the manner set forth in the attached amending order is approved or favored by producers who, during such period, were engaged in the production of milk for sale in the marketing area.

**Marketing agreement and order.** Annexed hereto and made a part hereof are two documents entitled "Marketing Agreement Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area" and "Order Amending the Order, as Amended Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area" which have been decided upon as the appropriate and detailed means of effectuating the foregoing conclusions. These documents 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.

**It is hereby ordered.** That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order amending the order, as amended, which will be published with the decision.

This decision filed at Washington, D. C., this 23d day of November 1953.

[SEAL] TRUE D. MORSE,  
Secretary of Agriculture.

**Order<sup>1</sup> Amending the Order, as Amended, Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area**

§ 927.0 **Findings and determinations.** The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of each of the previously issued amend-

ments 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, as amended, 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, as amended, regulating the handling of milk in the New York metropolitan milk 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 amended, and as hereby further 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 § 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area and the minimum prices specified in the said order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

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

1. Amend § 927.40 (a) by adding at the end of the first sentence thereof the following proviso: "Provided, That the utilization percentage for the month of October 1953 used in making such computations shall be 60.5."

[F. R. Doc. 53-9966; Filed, Nov. 25, 1953; 8:55 a. m.]

#### [ 7 CFR Part 968 ]

[Docket No. AO-173-A6]

#### HANDLING OF MILK IN WICHITA, KANSAS, MARKETING AREA

#### SUPPLEMENTAL NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Notice was issued on September 18, 1953 (18 F. R. 5630), of a public hearing

to be held on October 7, 1953, at the Allis Hotel, Wichita, Kansas, on certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Wichita, Kansas, marketing area. At the hearing, testimony was received on some of the proposals, and the hearing was recessed to resume at 10:00 a. m., c. s. t., December 1, 1953, at the Allis Hotel, Wichita, Kansas.

Notice is hereby given, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900) that, in addition to the proposed amendments contained in the notice of September 18, 1953, evidence will also be received at the resumed hearing with respect to the proposed amendments hereinafter set forth (which are in part modifications of proposals contained in the original hearing notice) or appropriate modifications thereof. Such additional proposed amendments have not received the approval of the Secretary.

Additional amendments to the order were proposed as enumerated below:

Proposed by Wichita Milk Producers Association:

13a. Delete §§ 968.3, 968.8, 968.40 through 968.45, 968.50, 968.51, 968.60 through 968.63, 968.70, 968.71, 968.88, and substitute or add as follows:

§ 968.3 **Wichita, Kansas Marketing Area.** "Wichita, Kansas Marketing Area" means all of the territory within the corporate limits of the City of Wichita, Kansas and the territory within Delano, Kechi, Minneha, Riverside, Waco, Gypsum and Wichita Townships, and the City of Eastborough, all in Sedgwick County, Kansas.

§ 968.8 **Pool plant.** "Pool plant" means any approved plant other than that of a producer-handler, (a) during any delivery period within which such plant disposes of as Class I in the marketing area, an amount of milk equal to 25 percent or more of such plant's receipts of milk from approved dairy farmers, and (b) disposes of in Class I an amount equal to 50 percent or more of such plant's receipts of milk from approved dairy farmers.

For the purposes of this definition the following shall apply:

(1) Milk diverted from an approved plant for the account of the handler operating such approved plant shall be considered a receipt at the approved plant from which it was diverted; and

(2) Milk diverted from an approved plant for the account of a cooperative association which does not operate a plant shall be deemed to have been received by such cooperative association at a pool plant.

b. Add a new paragraph (f) to § 968.22 as follows:

(f) On or before the 10th day after the end of each delivery period, report to each cooperative association which so requests (1) the amount and class utilization of milk received by each handler from approved dairy farmers who are members of such cooperative association. For the purpose of this report,

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

the milk so received shall be prorated to each class in the proportion that total receipts of milk from approved dairy farmers were used in each class; (2) in respect to each member of such cooperative association, the number of days shipped, the amount of delivered base milk, the amount of delivered excess milk, the total delivery of milk, the butterfat test and the amount deducted for marketing service.

§ 968.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received within the month by a handler and which is required to be reported pursuant to § 968.30 shall be classified by the market administrator pursuant to the provisions of §§ 968.41 to 968.46.

§ 968.41 *Classes of utilization.* Subject to conditions set forth in § 968.43 and 968.44, classes of utilization shall be:

(a) Class I milk shall be all skim milk (including reconstituted skim milk and butterfat (1) disposed of in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drink, yogurt, cream, cultured sour cream, aereated products containing milk or cream, egg nog, any mixture (except bulk ice cream mix) of cream and milk or skim milk, (2) used to produce concentrated (including frozen) milk, flavored milk or flavored milk drink disposed of for fluid consumption neither sterilized nor in hermetically sealed cans, skim and fat used in creaming cottage cheese and (3) all other skim milk and butterfat not specifically accounted for as Class II milk.

(b) Class II milk shall be all skim milk and butterfat: (1) Used to produce butter, cheese (including skim milk used to produce cottage cheese curd, but not including skim milk or butterfat used in creaming cottage cheese) plain or sweetened condensed or evaporated milk, spray or roller process nonfat dry milk solids, powdered whole milk, ice cream, in ice cream mix, frozen desserts, casen, margarin; (2) in cream frozen and stored; (3) used for starter churning, wholesale baking and candy making; (4) disposed of as livestock feed; (5) in skim milk dumped after prior notification and an opportunity for verification by the market administrator; (6) in shrinkage up to 2 percent of receipts from producers; (7) in shrinkage of other source milk; and (8) in inventory at the end of the month as milk, skim milk, cream (except frozen) or any product specified in paragraph (a) of this section.

§ 968.42 *Shrinkage.* The market administrator shall prorate shrinkage of skim milk and butterfat classified in Class II milk between the receipts of skim milk and butterfat, respectively, in milk from producers and from other sources. For the purpose of prorating shrinkage of skim milk and butterfat, skim milk and butterfat in milk diverted directly from producers' farms to another handler shall be included as a receipt of the handler to whom such skim milk and butterfat was diverted, and excluded from receipts of the diverting handler.

§ 968.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat classified as Class II milk shall be reclassified if such skim milk or butterfat is later disposed of by such handler or another handler (whether in original or other form) as Class I milk. Any skim milk or butterfat which was classified as Class II in the previous month pursuant to § 968.41 (b) (7) shall be reclassified as Class I milk if it is subtracted in the current month from Class I pursuant to § 968.46 (a) (4).

§ 968.44 *Transfers.* Skim milk or butterfat transferred from a pool plant shall be classified:

(a) As Class I milk if transferred in the form of milk, skim milk, or cream, to the pool plant of another handler unless utilization in Class II is mutually indicated in writing to the market administrator by the operators of both plants on or before the 7th day after the end of the delivery period within which such transfer occurred: *Provided*, That the skim milk or butterfat so assigned to Class II shall be limited to the amount thereof remaining in Class II in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 968.46, and any additional amounts of such skim milk or butterfat shall be assigned to Class I. *And provided further*, That if either or both plants have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to producer milk.

(b) As Class I milk if transferred in the form of milk, skim milk, or cream to a producer-handler.

(c) As Class I milk if transferred in the form of milk, skim milk or cream to a nonpool plant located more than 250 miles from the pool plant by the shortest highway distance as determined by the market administrator, except that (1) cream so transferred may be classified as Class II milk if its utilization as Class II milk is established through the operation of another Federal order for another milk marketing area; or (2) cream so transferred with prior notice to the market administrator, and with each container labeled or tagged with a certificate of the transferor that such cream is sold as "Grade C cream for manufacturing only" may be classified as Class II milk, subject to such verification of alternate utilization as the market administrator may make.

(d) As Class I milk, if transferred in the form of milk, skim milk or cream to a nonpool plant located less than 250 miles from the pool plant from which transferred, unless the market administrator is permitted to audit the records of receipts and utilization at such nonpool plant, in which case the classification of all skim milk and butterfat received at such nonpool plant shall be

determined and the skim milk and butterfat transferred from the pool plant shall be allocated to the highest use remaining after subtracting, in series beginning with Class I milk, receipts of skim milk and butterfat at such nonpool plant direct from dairy farmers who the market administrator determines constitute the regular source of supply for fluid usage of such nonpool plant in markets supplied by such plant.

(e) Skim milk or butterfat moved from an approved plant to an unapproved plant located not more than 250 miles from the approved plant and which does not distribute fluid milk or cream shall be classified as Class II milk.

(f) Skim milk or butterfat transferred to a nonpool plant from which fluid milk, skim milk or cream is transferred to a pool plant shall be subject to reclassification to the extent of the amount so transferred from such nonpool plant.

§ 968.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the report of receipts and utilization submitted by each handler and shall compute the pounds of skim milk and butterfat in Class I and Class II milk for such handler.

§ 968.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 968.45 the market administrator shall determine the classification of milk received from producers as follows:

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk determined pursuant to § 968.41 (b) (5)

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received from other pool plants in a form other than milk, skim milk or cream according to its classifications pursuant to § 968.41,

(3) Subtract from the remaining pounds of skim milk, in series beginning with Class II, the pounds of skim milk in receipt of other source milk;

(4) Subtract from the remaining pounds of skim milk in series beginning with Class II, the pounds of skim milk in inventory at the beginning of the month in the form of milk, skim milk, cream (except frozen) or any product specified in § 968.41 (a),

(5) Subtract from the remaining pounds of skim milk in each class the skim milk received from other handlers in the form of milk, skim milk or cream according to its classification as determined pursuant to § 968.44 (a),

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

(7) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk received from producers, subtract such excess from the remaining pounds of skim milk in series beginning with Class II milk. Any amount so subtracted shall be called "overage."

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

(c) Determine the weighted average butterfat content of the Class I and Class II milk computed pursuant to paragraphs (a) and (b) of this section.

§ 968.50 *Basic formula price to be used in determining Class I prices.* The basic formula price to be used in determining the price per hundredweight of Class I milk shall be the highest of the prices computed pursuant to paragraphs (a) and (b) of this section.

(a) The average of the basic or field-prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department divided by 3.5 and multiplied by 3.8:

*Present Operator and Location*

Borden Co., Mount Pleasant, Mich.  
 Carnation Co., Sparta, Mich.  
 Pet Milk Co., Hudson, Mich.  
 Pet Milk Co., Wayland, Mich.  
 Pet Milk Co., Coopersville, Mich.  
 Borden Co., Greenville, Wis.  
 Borden Co., Black Creek, Wis.  
 Borden Co., Orfordville, Wis.  
 Borden Co., New London, Wis.  
 Carnation Co., Chilton, Wis.  
 Carnation Co., Berlin, Wis.  
 Carnation Co., Richland Center, Wis.  
 Carnation Co., Oconomowoc, Wis.  
 Carnation Co., Jefferson, Wis.  
 Pet Milk Co., New Glarus, Wis.  
 Pet Milk Co., Belleville, Wis.  
 White House Milk Co., Manitowoc, Wis.  
 White House Milk Co., West Bend, Wis.

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

(1) From the simple averages as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department during the month, subtract 3 cents, add 20 percent thereof and multiply by 3.8.

(2) From the simple average, as computed by the market administrator, of the weighted averages of carlot price per pound for nonfat dry milk solids, spray, and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.5, and then multiply by 0.962.

§ 968.51 *Class prices.* Subject to the provisions of § 968.52, the minimum prices per hundredweight to be paid by each handler for milk received at his plant from producers during the month shall be as follows:

(a) *Class I milk.* The price per hundredweight shall be the price determined pursuant to § 968.50 plus \$1.90.

(b) *Class II milk.* The price per hundredweight shall be a price computed

pursuant to § 968.50 (b) using prices for butter and nonfat dry milk solids for the current delivery period minus 20 cents.

§ 968.52 *Butterfat differentials to handlers.* If the average butterfat content of the milk of any handler allocated to either class pursuant to § 968.46 is more or less than 3.8 percent there shall be added to the respective class price computed pursuant to § 968.51 for each one-tenth of 1 percent that the average butterfat content of such milk is above 3.8 percent, or subtracted for each one-tenth of 1 percent that such average butterfat content is below 3.8 percent, an amount equal to the butterfat differential computed as follows:

(a) For Class I milk, multiply the butter price specified in § 968.50 (b) (1) by 1.25 and divide the result by 10;

(b) For Class II milk, multiply the butter price specified in § 968.50 by 1.15 and divide the result by 10.

§ 968.60 *Producer-handlers.* (a) Sections 968.40 to 968.46, 968.50 to 968.52, 968.70 to 968.71, 968.80 to 968.88, shall not apply to a producer-handler.

(b) *Other source milk.* If a handler has purchased or received skim milk or butterfat from a producer-handler, or from sources other than producers or other handlers, and has sold or disposed of such skim milk or butterfat for other than Class II purposes, the market administrator in determining the net pool obligation of the handler pursuant to § 968.70 shall add an amount equal to the difference between (1) the value of such milk and butterfat according to its utilization by the handler and (2) the value at the Class II price. The provisions of this section shall not apply if the handler can prove to the market administrator that such skim milk and butterfat was used only to the extent that skim milk and butterfat from producers, was not available either directly from producers or at the plant of another handler at the class prices pursuant to §§ 968.51 and 968.52.

§ 968.61 *Handlers subject to other orders.* In the case of any handler who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by another milk marketing agreement or order issued pursuant to the act, the provisions of this order shall not apply except as follows:

(a) The handler shall, with respect to his total receipts of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) If the price which such handler is required to pay under the other Federal order to which he is subject, for skim milk and butterfat which would be classified as Class I milk under this order is less than the price provided by this order, such handler shall pay to the market administrator for deposit into the producer-settlement fund (with respect to all skim milk and butterfat disposed of as Class I milk within the marketing area) an amount equal to the difference

between the value of such skim milk or butterfat as computed pursuant to this order and its value as determined pursuant to the other order to which he is subject. Such payments shall be made on or before the 12th day after the end of each delivery period.

§ 968.63 *Handler operating an approved plant which is not a pool plant.* Each handler who operates an approved plant which is not a pool plant during a delivery period, shall in lieu of the payments required pursuant to §§ 968.80 through 968.85, pay to the market administrator, for the producer-settlement fund, on or before the 25th day after the end of such delivery period, the amount resulting from the computations of either paragraph (a) or paragraph (b) of this section, whichever is less.

(a) From the value determined by multiplying the amount of milk disposed of in the marketing area by such handler as Class I milk during the delivery period by the Class I price determined pursuant to § 968.51 (a) subtract the amount determined by multiplying such amount of milk by the Class II price determined pursuant to § 968.51 (b).

(b) Any plus amount resulting from the following computation:

(1) To an amount equal to the net pool obligation which would be computed pursuant to § 968.70 for such handler for such delivery period if such handler operated a pool plant, add for each one-tenth by which the average butterfat content of milk received from approved dairy farmers by such handler is greater than 3.8 percent, or subtract for each one-tenth percent that such average butterfat content is less than 3.8 percent, an amount computed by multiplying the butterfat differential computed pursuant to § 968.82 by the total hundredweight of such milk; and

(2) Deduct the gross payments made by such handler to approved farmers for milk received during such delivery period.

§ 968.70 *Computation of the value of milk received from producers by each handler at pool plants.* The value of milk received during each delivery period by each-handler from producers at pool plants shall be a sum of money computed as follows:

(a) Multiply the pounds of milk in each class computed pursuant to § 968.46 (c) by the applicable respective class prices (adjusted pursuant to § 968.52) and add together the resulting amounts;

(b) Add an amount computed by multiplying the pounds of overage deducted from each class pursuant to § 968.46 (a) (5) by the applicable respective class prices;

(c) Add any charges computed as follows:

(1) For any skim milk or butterfat in inventory reclassified pursuant to § 968.43 (b) which is not in excess of the quantity in producer milk classified as Class II milk (other than as shrinkage) in the handler's plant(s) for the preceding month, a charge shall be computed at the difference between its value at the Class I price for the current month

and its value at the Class II price of the preceding month;

(2) For any other skim milk or butterfat reclassified pursuant to § 968.43 (b) a charge shall be computed at the difference between its value at the Class I price for the current months and its value at the Class II price for the month in which previously classified as Class II milk;

(d) For any other source skim milk or butterfat subtract from Class I milk pursuant to § 968.46 (a) (2) (3) and (b) add an amount equal to the difference between the values of such skim milk and butterfat at the Class I price and at the Class II price, unless the handler can prove to the satisfaction of the market administrator that such other source skim milk and butterfat was used only to the extent that producer milk was not available either directly from producers or at the plant of another handler at the class prices pursuant to § 968.51 (a) and (b)

§ 968.71 *Computation of uniform prices for base milk and excess milk.* For each delivery period, the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk as follows:

(a) Combine into one total the values computed pursuant to § 968.70 for all handlers who made the reports prescribed in § 968.30 and who made the payments pursuant to §§ 968.80 and 968.83 for the preceding month:

(b) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(c) Subtract if the average butterfat content of the milk included in these computations is greater than 3.8 percent; or add if such average computed by multiplying the amount by which the average butterfat content of such milk varies from 3.8 percent by the butterfat differential computed pursuant to § 968.82 and multiplying the resulting figure by the total hundredweight of such milk;

(d) Compute the total value on a 3.8 percent butterfat basis of the excess milk included in these computations by multiplying the hundredweight of such milk not in excess of the total quantity Class II milk included in these computations by the price of Class II milk of 3.8 percent butterfat content, multiplying the hundredweight of such milk in excess of the total hundredweight of such Class II milk by the price of Class I milk of 3.8 percent butterfat content and adding together the resulting amounts;

(e) Divide the total value of excess milk obtained in paragraph (d) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.8 percent butterfat content received from producers;

(f) Subtract the value of excess milk obtained in paragraph (d) of this section from the value of all milk obtained in paragraph (c) of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(g) Divide the amount obtained in paragraph (f) of this section by the total

hundredweight of base milk included in these computations;

(h) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (g) of this section. The resulting figure shall be the uniform price for base milk of 3.8 percent butterfat content received from producers.

§ 968.88 *Expense of administration.* As his prorata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 12th day after the end of each month, 4 cents per hundredweight, or such amount not exceeding 4 cents per hundredweight as the Secretary may prescribe, with respect to all receipts within the month of (a) other source milk which is classified as Class I milk, and (b) all milk from approved dairy farmers which is classified Class I.

Proposed by Beatrice Foods Co., Steffen Dairy Foods Company, Inc., DeCoursey Cream Company and Hyde Park Dairies, Inc..

14. That the entire order be amended to read as follows:

#### DEFINITIONS

§ 968.1 *Act.* "Act" means Public Act No: 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

§ 968.2 *Secretary.* "Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 968.3 *Wichita, Kansas, Marketing Area.* "Wichita, Kansas, marketing area" means all the territory within the corporate limits of the City of Wichita, Kansas, and the territory within Delano, Kechi, Minneha, Riverside, Waco, Gypsum, Park, Payne and Wichita Townships, and the City of Eastborough, all in Sedgwick County, Kansas.

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

§ 968.5 *Approved dairy farmer.* "Approved dairy farmer" means any person who holds a currently valid permit or license issued by the Health Department of the City of Wichita or of Sedgwick County for the production of milk to be disposed of as Grade "A" milk.

§ 968.6 *Producer.* "Producer" means any approved dairy farmer, other than a producer-handler, whose milk is received at a pool plant or is diverted from a pool plant by the handler who operates such pool plant, or by a cooperative association, to a plant which is not a pool plant for the account of such handler or cooperative association. This definition shall not include any approved dairy farmer with respect to milk received by a handler who is partially exempted from the provisions of this order pursuant to § 968.62.

§ 968.7 *Approved plant.* "Approved plant" means any plant approved by the

health authorities of the City of Wichita, Kansas or of Sedgwick County, Kansas, for the handling of milk to be disposed of for fluid consumption as milk in the marketing area and currently used for any or all of the functions of receiving, weighing (or measuring), sampling, cooling, pasteurizing or other preparation of milk for sale or disposition as milk or cream for fluid consumption in the marketing area.

§ 968.8 *Pool plant.* "Pool plant" means any approved plant other than that of a producer-handler.

(a) That during any delivery period within which such plant disposes of as Class I milk in the marketing area, an amount of milk equal to 20 percent or more of such plant's receipts of milk from approved dairy farmers, and

(b) Disposed of as Class I milk, a total amount of milk equal to 40 percent or more of such plant's total receipts of milk from approved dairy farmers, during such delivery period.

(c) For the purposes of this definition, the following shall apply:

(1) Milk diverted from an approved plant for the account of the handler operating such approved plant shall be considered a receipt at the approved plant from which it was diverted; and

(2) Milk diverted from an approved plant to an unapproved plant for the account of a cooperative association which does not operate a plant shall be deemed to have been received by such cooperative association at a pool plant.

§ 968.9 *Handler.* "Handler" means any person who, on his own behalf or on behalf of others, disposes of as Class I or Class II milk in the marketing area all or a portion of the milk purchased or received by him at an approved plant from (a) approved dairy farmers, (b) his own production, and (c) other handlers. This definition shall include a cooperative association with respect to milk which it causes to be delivered from a producer to a plant from which no milk is disposed of as Class I milk or as Class II milk in the marketing area.

§ 968.10 *Cooperative association.* "Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To have its entire activities under the control of its members, and

(b) To have and to be exercising full authority in the sale of milk of its members.

§ 968.11 *Producer-handler.* "Producer-handler" means any approved dairy farmer who operates an approved plant, but who receives no milk from other approved dairy farmers.

§ 968.12 *Delivery period.* "Delivery period" means the then current marketing period from the first to, and including, the last day of each month.

§ 968.13 *Milk product.* "Milk product" means any product manufactured from milk or milk ingredients except products which fall within the definition of Class II milk pursuant to paragraph (b) of § 968.41 and which are disposed of in the form in which received without

further processing or packaging by the handler.

§ 968.14 *Market administrator*. "Market administrator" means the person designated pursuant to § 968.20 as the agency for the administration of this part.

§ 968.15 *Exempt milk*. "Exempt milk" means any skim milk or butterfat which is received at a pool plant:

(a) In bulk from a non-pool plant for processing and bottling, and for which an equivalent quantity of packaged milk is returned to the operator of the non-pool plant during the same month; or

(b) In packaged form from a non-pool plant in return for an equivalent quantity of bulk skim milk or butterfat moved from a pool plant for processing and bottling during the same month.

§ 968.16 *Emergency milk*. "Emergency milk" means skim milk or butterfat other than that in producer milk which is received by a handler under the conditions and subject to the limitations prescribed in § 968.45.

§ 968.17 *Producer milk*. "Producer milk" means any skim milk or butterfat which is produced by a producer, other than a producer-handler, all of which except that used for home consumption, is being regularly shipped to a handler either directly from the producer or from other handlers.

§ 968.18 *Other source milk*. "Other source milk" means any skim milk or butterfat other than that contained in producer milk, emergency milk or exempt milk.

#### MARKET ADMINISTRATOR

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

§ 968.21 *Powers*. The market administrator shall:

(a) Administer the terms and provisions of this part, and

(b) Report to the Secretary complaints of violations of the provisions of this part.

§ 968.22 *Duties*. The market administrator shall:

(a) Within 45 days following the date upon which he enters upon his duties execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in the amount and with surety thereon satisfactory to the Secretary.

(b) Pay out of the funds provided by § 968.88 the cost of his bond, his own compensation, and all other expenses necessarily incurred by him in the maintenance and functioning of his office;

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

(d) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person

who within 10 days after the date upon which he is required to perform such acts, has not:

(1) Made reports pursuant to §§ 968.30 through 968.32 or

(2) Made payments pursuant to §§ 968.80 through 968.86; and

(e) Promptly verify the information contained in the reports submitted by handlers.

#### REPORTS, RECORDS AND FACILITIES

§ 968.30 *Periodic reports*. On or before the 7th day after the end of each delivery period each handler, except a producer-handler, shall, with respect to milk or milk products which were purchased, received, or produced by such handler during such delivery period, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(a) The receipts at each plant of milk from each producer or approved dairy farmer, the butterfat content, and the number of days on which milk was received from each producer;

(b) The receipts of milk, cream, and milk products from handlers who purchase or receive milk from producers or approved dairy farmers and the butterfat content;

(c) The receipts of milk, cream, and milk products received as emergency milk, exempt milk, and other source milk and the butterfat content thereof;

(d) The respective quantities of milk and milk products and the butterfat content which were sold, distributed or used, including sales to other handlers for the purpose of classification pursuant to § 968.40; and

(e) Such other information with respect to the use of the milk as the market administrator may request, including a separate statement of Class I and Class II milk disposed of within the marketing area.

§ 968.31 *Reports of payments*. On or before the 20th day after the end of each delivery period, upon the request of the market administrator, each handler who purchased or received milk from producers or approved dairy farmers shall submit to the market administrator his producer payroll for such delivery period which shall show for each producer and each approved dairy farmer:

(a) His total deliveries of base milk and total deliveries of milk in excess of base milk;

(b) The average butterfat content of his milk; and

(c) The net amount of such handler's payments to such producer or approved dairy farmer with the prices, deductions, and charges involved.

§ 968.32 *Reports of producer-handlers*. Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall require.

§ 968.33 *Verification of reports and payments*. The market administrator shall verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler shall keep adequate records of

milk the classification depends. Each handler or person upon whose disposition receipts and utilization of milk and milk products and shall, during the usual hours of business, make available to the market administrator or his representative such records and facilities as will enable the market administrator to:

(a) Verify the receipts and disposition of all milk and milk products, and in case of errors or omissions, ascertain the correct figures;

(b) Weigh, sample, and test for butterfat content the milk purchased or received from producers and any product of milk upon which classification depends; and

(c) Verify the payments to producers prescribed in § 968.80.

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

#### CLASSIFICATION

§ 968.40 *Skim milk and butterfat to be classified*. All skim milk and butterfat received within the delivery period by a handler which is required to be reported pursuant to § 968.30 shall be classified by the market administrator pursuant to the provisions contained in §§ 968.41 through 968.46.

§ 968.41 *Classes of utilization*. Subject to the conditions set forth in §§ 968.42 through 968.46, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk and butterfat disposed of for consumption under a Grade A label in the form of milk, skim milk, buttermilk, flavored milk drinks, cream (sweet or sour, including any mixture of cream and milk or skim milk containing less butterfat than the regular standard for cream) and all skim milk and butterfat contained in shrinkage of producer milk in excess of amount provided for in paragraph (b) (5) of this section.

(b) Class II milk shall be all skim milk and butterfat accounted for:

(1) As having been used to produce any product other than those specified in Class I milk which shall include, but not limited to, butter, plain or sweetened condensed or evaporated milk, spray or roller process powdered milk solids, ice cream, ice cream mix, frozen desserts, eggnog, aerated cream products, any sterilized dairy product, casein, marga-

rine and cheese (including cottage cheese or baked cheese) or

- (2) Disposed of for livestock feed; or
- (3) In cream frozen and stored; or
- (4) In skim milk dumped, after prior notification to and opportunity for verification by the market administrator or
- (5) In shrinkage up to 3 percent of receipts from producers; or
- (6) In shrinkage of other source milk; or
- (7) Disposed of in bulk to commercial bakeries or food products manufacturing plants (other than dairy plants) which do not dispose of milk for fluid consumption; or
- (8) In inventory variations.

§ 968.42 *Shrinkage.* The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Plant shrinkage shall be determined by deducting the total of specific uses from the volume handled. The remainder, if it can reasonably be considered to represent the loss or shrinkage in fluid milk products normally incurred by the handler in the receiving, processing, packaging, and distribution of the milk products handled by him, shall be considered his plant shrinkage.

(b) Plant shrinkage shall be prorated between the receipts of skim milk and butterfat in receipts from producers, of emergency milk, of exempt milk and of other source milk.

§ 968.43 *Responsibility of handlers in establishing the classification of milk.*

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise according to the provisions contained in § 968.41 through 968.46.

(b) Any skim milk of butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect according to the provisions contained in §§ 968.41 through 968.46.

§ 968.44 *Transfers.* Milk, skim milk or cream transferred from an approved plant to other milk plants shall be classified as follows:

(a) Milk or skim milk moved in fluid form from an approved plant to an unapproved plant located more than 250 miles from the approved plant shall be Class I milk;

(b) Cream moved in fluid form from an approved plant to an unapproved plant located more than 250 miles from the approved plant shall be Class I milk if moved under Grade A certification and shall be Class II milk if so moved without Grade A certification;

(c) Milk, skim milk, or cream moved in fluid form from an approved plant to an unapproved plant located not more than 250 miles from the approved plant and from which fluid milk and cream are distributed, shall be Class I if moved in the form of milk or skim milk or cream: *Provided*, That if the purchaser certifies that the market administrator may verify the necessary records such milk, skim milk, or cream, shall be classified as follows:

(1) Determine the classification of all milk received in the unapproved plant; and

(2) Allocate the milk, skim milk or cream received from the approved plant to the highest use classification remaining after subtracting, in series beginning with the highest use classification, the receipts of milk at such unapproved plant received directly from dairy farmers whom the market administrator determines constitute its regular source of milk for Class I use;

(d) Milk, skim milk or cream moved from an approved plant to an unapproved plant located not more than 250 miles from the approved plant and which does not distribute fluid milk or cream shall be classified as Class II milk;

(e) Milk, skim milk or cream moved from an approved plant to the approved plant of another handler, except a producer-handler, shall be Class I, unless utilization in another class is indicated in writing by both the seller and the buyer on or before the 7th day after the end of the delivery period, but in no event shall the amount classified in any class exceed the total use in such class by the receiving handler. *Provided*, That if either or both handlers have purchased other source milk, skim milk or cream so moved shall be classified at both plants so as to return the highest class utilization to producer milk.

(f) Milk, skim milk or cream disposed of from an approved plant to a producer-handler shall be Class I.

§ 968.45 *Emergency milk.* In any delivery period in which the market administrator determines that the supply of skim milk or butterfat in producer milk available to any handler at the Class I price is insufficient for such handler's disposition of Class I milk, skim milk or butterfat, other than that in producer milk, which is received by such handler and which is permitted by the health authorities in the marketing area to be disposed of as Grade A milk, shall be considered "emergency milk" up to an amount equal to 5 percent of his total disposition of skim milk or butterfat in Class I milk.

§ 968.46 *Exempt milk.* All receipts of exempt skim milk and butterfat shall be assigned to Class I skim milk and butterfat.

§ 968.47 *Computation of skim milk and butterfat in each class.* For each delivery period the market administrator shall correct for mathematical and other obvious errors the delivery period report submitted by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in each class for such handler.

§ 968.48 *Allocation of skim milk and butterfat classified.* Skim milk and butterfat shall be allocated in the following manner:

(a) Subtract from the total pounds of skim milk and butterfat in Class II the pounds of skim milk and butterfat in shrinkage pursuant to § 968.41 (b) (5)

(b) Subtract from the total pounds of skim milk and butterfat in Class I the pounds of skim milk and butterfat contained in "emergency milk" as set forth in § 968.45.

(c) Subtract from the total pounds of skim milk and butterfat in Class I the pounds of skim milk and butterfat contained in "exempt milk" as set forth in § 968.15.

(d) Subtract from the remaining pounds of skim milk and butterfat in each class the pounds of skim milk and butterfat received from other handlers in a form other than milk, skim milk or cream according to its classification pursuant to § 968.41.

(e) Subtract from the remaining pounds of skim milk and butterfat in Class II the pounds of skim milk and butterfat received as Class II milk in the form of cream from ungraded sources from the approved plant of another handler at which ungraded milk is regularly received from dairy farmers.

(f) Subtract the pounds of skim milk and butterfat in milk, skim milk or cream received from pool plants of other handlers from the pounds of skim milk and butterfat remaining in the class to which assigned, pursuant to § 968.44.

(g) Subtract from the pounds of skim milk and butterfat remaining in Class II milk the pounds of skim milk and butterfat in other source milk which was not subject to the Class I pricing provisions of an order issued pursuant to the act: *Provided*, That if the pounds of skim milk or butterfat to be subtracted is greater than the remaining pounds of skim milk in Class II, the balance shall be subtracted from the pounds of skim milk or butterfat in Class I;

(h) Subtract pro rata from the pounds of skim milk and butterfat remaining in Class I and Class II the pounds of skim milk and butterfat in other source milk which was subject to the Class I pricing provisions of another order issued pursuant to the act;

(i) Add to the pounds of skim milk and butterfat remaining in Class II milk the pounds of skim milk and butterfat subtracted pursuant to paragraph (a) of this section.

(j) If the pounds of skim milk and butterfat remaining in all classes exceed the pounds of skim milk and butterfat in milk received from producers, subtract such excess from the pounds of skim milk and butterfat remaining in the various classes in series beginning with the lowest price class.

§ 968.49 *Determination of producer milk in each class.* For each class add the pounds of skim milk and the pounds of butterfat allocated to producer milk pursuant to § 968.48 and determine the percentage of butterfat in each class.

#### MINIMUM PRICES

§ 968.50 *Basic formula price.* The basic formula price to be used in determining the price per hundredweight of Class I milk for the delivery period shall be the higher of the prices computed pursuant to paragraphs (a) or (b) of this section.

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the delivery period at the following plants or places for which prices have been reported to the

market administrator or to the Department divided by 3.5 and multiplied by 3.8:

*Present Operator and Location*

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

(b) The price per hundredweight computed as follows:

(1) From the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department during the delivery period, subtract 3¢, add 20 percent thereof and multiply by 3.8.

(2) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound of nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 23th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 3.5 and then multiply by 0.962.

(3) Add together the results of subparagraphs (1) and (2) of this paragraph.

§ 968.51 *Class I milk prices.* Subject to the provisions of § 968.53, a minimum price per hundredweight to be paid by each handler for milk received from his plant by producers during the month and disposed of as Class I milk shall be as follows: To the basic formula price, as determined by § 968.50, as determined during the preceding delivery period for the months of August through March, add \$1.55; all other months, add \$1.15.

§ 968.52 *Class II prices.* Subject to the provisions of § 968.53, a minimum price per hundredweight to be paid by each handler for Class II milk received at his plant from producers during the month shall be as follows: Determine the average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.8 percent butterfat content received from farmers during the current delivery period at the following plants or places for which prices have been reported to the market administrator or to the Department.

*Plants and Locations*

- DeCoursey Cream Co., Wichita, Kans.
- Arkansas City Cooperative Milk Association, Arkansas City, Kans.
- Pet Milk Co., Iola, Kans.
- Page Milk Co., Coffeyville, Kans.

§ 968.53 *Handler butterfat differential.* If the average butterfat test of Class I milk or Class II milk is calculated pursuant to § 968.49 and is more or less than 3.8 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization for each one-tenth of one percent that such average butterfat test is above or below 3.8 percent is calculated as follows: Multiply by 0.120 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the previous delivery period and round to the nearest one-tenth cent.

§ 968.54 *Emergency price provision.*

(a) Whenever the provisions of this part require the market administrator to use a specific price or prices for any milk product for the purpose of determining class prices or for any other purpose, the market administrator shall add to the specific price the amount of any subsidy payment being made by any Federal agency in connection with the milk, or product, associated with the prices specified.

(b) If the specified price which the market administrator is required to use for the purpose of determining class prices or for any other purpose is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price specified.

**APPLICATION OF PROVISIONS**

§ 968.60 *Producer-handlers.* Sections 968.40 through 968.49, 968.50 through 968.54, 968.61 through 968.62, 968.70, 968.71, 968.80 through 968.88, shall not apply to a producer-handler.

§ 968.61 *Handlers subject to other orders.* In the case of any handler (as defined in this part) who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by another milk marketing agreement or order issued pursuant to the act, the provisions of this subpart shall not apply except as follows:

(a) The handler shall with respect to his total receipts and utilization of milk, make reports to the market administrator at such time and in such manner as the market administrator may require and shall allow verification of such reports;

(b) If the price which such handler is required to pay under the other Federal order to which he is subject for milk which would be classified as Class I milk under this subpart is less than the price provided by this subpart, such handler shall pay to the market administrator, for deposit in the producer-settlement fund, with respect to all milk disposed of (except to other handlers) as Class I milk within the marketing area, an amount equal to the difference between the value of such milk as computed pursuant to this subpart and its value as determined pursuant to the other order to which he is subject.

§ 968.62 *Handler operating an approved plant which is not a pool plant.* Each handler who operates an approved plant which is not a pool plant during a delivery period, shall in lieu of the payments required pursuant to § 968.80 through § 968.85, pay to the market administrator, for the producer-settlement fund, on or before the 25th day after the end of such delivery period, the amount resulting from the computations of either paragraph (a) or paragraph (b) of this section, whichever is less.

(a) The sum of the product of the quantity of milk received by such handler which was disposed of in the marketing area as Class I milk during the delivery period multiplied by the difference between the price for Class I milk pursuant to § 968.51 and the price for Class II milk pursuant to § 968.52.

(b) Any plus amount resulting from the following computation:

(1) To an amount equal to the net pool obligation which would be computed pursuant to § 968.70 for such handler for such delivery period if such handler operated a pool plant, and for each one-tenth by which the average butterfat content of milk received from approved dairy farmers by such handler is greater than 3.8 percent, or subtract for each one-tenth percent that such average butterfat content is less than 3.8 percent, an amount computed by multiplying the butterfat differential computed pursuant to § 968.82 by the total hundredweight of such milk; and

(2) Deduct the gross payments made by such handler to approved dairy farmers for milk received during such delivery period.

§ 968.63 *Coverage.* If a handler after subtracting receipts from other handlers and receipts from sources determined as other than producers, or other handlers, has disposed of milk or butterfat in excess of the milk or butterfat which, on the basis of his reports, has been credited to his producers as having been delivered by them, the market administrator, in determining the net pool obligation of the handler, pursuant to § 968.70, shall add an amount equal to the value of such milk or butterfat according to its utilization by the handler.

**DETERMINATION OF UNIFORM PRICE TO PRODUCERS**

§ 968.70 *Net pool obligations of handlers.* The net pool obligation of each handler for milk received from producers during each delivery period shall be a sum of money computed for such delivery period by the market administrator as follows: Multiply the pounds of milk in each class computed pursuant to § 968.49 by the applicable class price pursuant to § 968.51 or § 968.52 and § 968.53, add together the resulting values and add the value of any payments required to be made pursuant to § 968.63.

§ 968.71 *Computation and announcement of uniform prices.* For each delivery period the market administrator shall compute and announce the uniform prices per hundredweight for base milk and excess milk as follows:

(a) Combine into one total the net pool obligations of all handlers computed pursuant to § 968.70 who made the reports prescribed by § 968.30 for such delivery period and who made the payments prescribed by §§ 968.80 and 968.84 for the preceding delivery period;

(b) Add an amount equal to one-half of the cash balance in the producer-settlement fund less the amount due handlers pursuant to § 968.86;

(c) Compute the total value of the milk included in these computations which is in excess of the delivered base of producers by assigning such milk first to Class II milk and then to each succeeding higher classification until all such milk has been classified, and then multiplying the total pounds of excess milk assigned to each class by the appropriate class price adjusted for butterfat differences pursuant to § 968.53 and adding together the resulting amounts;

(d) Divide the total value of excess milk obtained in paragraph (c) of this section by the total hundredweight of such milk and round to the nearest cent. This result shall be known as the uniform price for excess milk at test.

(e) Subtract the value of excess milk obtained in paragraph (c) of this section from the value of all milk obtained in paragraph (b) of this section and adjust by any amount involved in rounding the uniform price for excess milk to the nearest cent;

(f) Divide the result obtained in paragraph (e) of this section by the total hundredweight of milk represented by the delivered bases of producers;

(g) Subtract not less than 4 cents nor more than 5 cents; the result shall be known as the uniform price per hundredweight for such delivery period for base milk of producers at test.

(h) The value of base and excess milk of 3.8 percent butterfat content shall be determined by adjusting the values obtained in paragraphs (d) and (g) of this section pursuant to § 968.82.

#### PAYMENTS

§ 968.80 *Time and method of payment.* On or before the 12th day after the end of each delivery period each handler shall make payment, after deducting the amount of the payment made pursuant to § 968.81, subject to the butterfat differential set forth in § 968.82 for milk purchased or received from producers by such handler during each delivery period as follows:

(a) To each producer, except as set forth in paragraph (c) of this section, not less than the uniform price per hundredweight computed pursuant to § 968.71 (g) for that quantity of milk received from such producer not in excess of such producer's base;

(b) To each producer, except as set forth in paragraph (c) of this section, not less than the excess price, computed pursuant to § 968.71 (d) for that quantity of milk received from such producer in excess of such producer's base; and

(c) To a cooperative association for milk which it caused to be delivered to a handler from producers and for which such cooperative association collects payments, a total amount equal to not less than the sum of the individual payments

otherwise payable to such producers under paragraphs (a) and (b) of this section.

§ 968.81 *Half delivery period payments.* On or before the 27th day of each delivery period, each handler shall make payment to each producer for the approximate value of the milk of such producer which, during the first 15 days of such delivery period, was received by such handler.

§ 968.82 *Producer butterfat differential.* If, during the delivery period, any handler has purchased or received from any producer milk having an average butterfat content other than 3.8 percent, such handler in making the payments prescribed in § 968.80 shall add to the prices per hundredweight for such producers for each one-tenth of one percent of average butterfat content in milk above 3.8 percent not less than, or shall subtract from such prices for such producer for each one-tenth of one percent of average butterfat content in milk below 3.8 percent not more than, an amount computed as follows: To the average price of 92-score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture (or such other Federal agency as may hereinafter be authorized to perform this price reporting function) for the delivery period during which such milk was received, add 20 percent and divide the resulting sum by 10.

§ 968.83 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 968.84, 968.86, 968.61 and 968.62, and out of which he shall make all payments to handlers pursuant to §§ 968.85 and 968.86: *Provided,* That the market administrator shall offset any such payment due to any handler against payments due from such handler. Immediately after computing the uniform price for each delivery period, the market administrator shall compute the amount by which each handler's net pool obligation, including the payments to producers which are required to be made pursuant to § 968.63, is greater or less than the sum obtained by multiplying the hundredweight of milk of producers by the appropriate prices required to be paid producers by handlers pursuant to § 968.80 and adding together the resulting amounts, and shall enter such amount on each handler's account as such handler's pool debit or credit, as the case may be, and render such handler a transcript of his account.

§ 968.84 *Payments to the producer-settlement fund.* On or before the 12th day after the end of each delivery period, each handler shall pay to the market administrator for payment to producers through the producer-settlement fund, the amount by which the net pool obligation of such handler, including the payments required to be made pursuant to § 968.63, is greater than the sum required to be paid producers by such handler pursuant to §§ 968.80 and 968.81.

§ 968.85 *Payments out of the producer-settlement fund.* (a) On or before the 12th day after the end of each delivery period, the market administrator shall pay to each handler for payment to producers the amount by which the sum required to be paid producers by such handler pursuant to §§ 968.80 and 968.81 is greater than the net pool obligation of such handler, including the payments required to be made pursuant to § 968.63.

(b) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 12th day after the end of the delivery period, has not received the balance of such reduced payment from the market administrator, shall be deemed to be in violation of § 968.80 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 968.86 *Adjustment of errors in payments.* (a) Whenever verification by the market administrator of reports or payments of any handler discloses errors in payments to the producer-settlement fund made pursuant to § 968.84, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 968.85, the market administrator shall, within 5 days, make payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure.

(b) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is more than was required to be paid pursuant to § 968.80, no handler shall be deemed to be in violation of § 968.80 if he reduces his payment to such producer by not more than such overpayment.

§ 968.87 *Marketing services.* (a) Deductions from marketing services. Except as set forth in paragraph (b) of this section, each handler shall deduct 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 968.80 (a) and (b) with respect to all milk of such producer purchased or received by such handler during the delivery period and shall pay such deductions to the market administrator on or before the 12th day after the end of such delivery period. Such moneys shall be used by the market administrator to verify weights, samples and tests

of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services.

(b) Deductions with respect to members of a cooperative association. In the case of producers for whom a cooperative association which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make the deductions from the payments to be made directly to producers pursuant to § 968.80 (a) and (b) which are authorized by such producers, and, on or before the 12th day after the end of each delivery period, pay over such deductions to the association of which such producers are members.

§ 968.88 *Expense of administration.* As his pro rata share of the expense of the administration of this part, each handler who purchased or received milk from producers, with respect to all milk received from approved dairy farmers during the delivery period, shall pay to the market administrator, on or before the 10th day after the end of such delivery period, an amount not to exceed 4 cents per hundredweight, which amount shall be determined by the market administrator subject to review by the Secretary.

§ 968.89 *Termination of obligation.* The provisions of this section shall apply to any obligation under this part for the payment of money.

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

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

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representative all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this sec-

tion, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an under-payment is claimed, or two years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund or such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

#### BASE RATING

§ 968.90 *Determination of base setting period.* For each delivery period the base of each producer shall be a quantity of milk calculated by the market administrator in the following manner: Multiply the applicable figure computed pursuant to § 968.91 by the number of days during such delivery period on which milk was received from such producer.

§ 968.91 *Determination of daily base.* (a) Effective January 1, 1948, and for each subsequent year thereafter the daily base of each producer, who regularly delivered milk to a handler during the next previous delivery periods of August, September, October, and November shall be computed by the market administrator in the following manner: Determine for each such producer his average daily delivery of milk to a handler for the time he delivered during the period from the next previous August 1 to November 30.

(b) The daily base of each producer who did not regularly deliver milk to a handler during the next previous delivery periods of August, September, October, and November but who began deliveries of milk to a handler subsequent to August 31 shall be computed by the market administrator in the following manner: For each delivery period from the date upon which the producer first delivers milk to a handler until January 1 after he shall have established a base pursuant to paragraph (a) of this section, the market administrator shall multiply such producer's daily average deliveries of milk during such period by

the percentage that total base deliveries are to total deliveries of all producers.

(c) In case of a producer-handler who disposes of all of his delivery routes to another handler who is not a producer, the market administrator shall determine the daily average of the total sales of Class I milk and Class II milk by such producer during the preceding three months. The figures so determined shall be such producer's base until his base may be established pursuant to paragraph (a) of this section.

§ 968.92 *Base rules.* (a) Any producer who ceases to deliver milk to a handler for a period of more than 30 consecutive days shall forfeit his base. In the event such producer thereafter commences to deliver milk to a handler he shall be allotted a daily base computed in the manner provided in § 968.91.

(b) A landlord who rents on a share basis shall be entitled to the entire daily base to the exclusion of the tenant if the landlord owns the entire herd. A tenant who rents on a share basis shall be entitled to the entire daily base to the exclusion of the landlord, if the tenant owns the entire herd. If the cattle are jointly owned by the tenant and landlord, the daily base shall be divided between the joint owners according to ownership of the cattle when such share basis is terminated.

(c) A producer, whether landlord or tenant, may retain his base when moving his entire herd of cows from one farm to another: *Provided*, That at the beginning of a tenant and landlord relationship the base of each landlord and tenant may be combined and may be divided when such relationship is terminated.

(d) Base may be transferred only under the following conditions:

- (1) In case of the death of a producer, his base may be transferred to a surviving member or members of his family who carry on the dairy operations; and
- (2) On the retirement of a producer, his base may be transferred to an immediate member of his family who carries on the dairy operations.

(e) The base of two producers may be combined in the case of forming a partnership, or may be divided in the case of the dissolution of a partnership.

(f) For the purposes of this section only, the term "producer" shall include any person who has been a producer as defined in § 968.6 but whom the Wichita Board of Health has suspended temporarily for failure to produce milk in conformity with the applicable health regulations of the City of Wichita, Kansas.

#### EFFECTIVE TIME; SUSPENSION, OR TERMINATION

§ 968.100 *Effective time.* The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to § 968.101.

§ 968.101 *Suspension or termination.* Any or all of the provisions of this part, or any amendment to this part, may be suspended or terminated as to any or all handlers after such reasonable notice as

the Secretary shall give and shall, in any event, terminate whenever the provisions of the act cease to be in effect.

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

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

(1) Continue in such capacity until removed,

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

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

§ 966.103 *Liquidation after suspension or termination*. Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

Copies of the original notice of hearing, this supplementary notice of hearing and of the order now in effect may be procured from the market administrator, 310 Derby Building, 352 North Broadway, Wichita 2, Kansas, or from the Hearing Clerk, Room 1353, South Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Dated: November 20, 1953, at Washington, D. C.

GEORGE A. DICE,  
Deputy Assistant Administrator

[F. R. Doc. 53-9957; Filed, Nov. 25, 1953;  
8:52 a. m.]

### [ 7 CFR Part 997 ]

[Docket No. AO 205-A1]

#### HANDLING OF FILBERTS GROWN IN OREGON AND WASHINGTON

##### NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENTS TO MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, 1952 Rev., Part 900) notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to proposed amendments to the marketing agreement and order (7 CFR, 1952 Rev., Part 997) regulating the handling of filberts grown in Oregon and Washington (hereinafter referred to as the "order"). That order is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), (hereinafter referred to as the "act") and any amendments which may be adopted as a result of this proceeding also will be effective pursuant to said act. Interested persons may file exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 1353, South Building, Washington 25, D. C., not later than the 12th day after publication of this recommended decision in the FEDERAL REGISTER, except that, if such 12th day should fall on a Saturday, Sunday, or a holiday they must be filed not later than the next succeeding workday. Exceptions should be filed in quadruplicate.

*Preliminary statement.* A public hearing, on the record of which the presently recommended amendments of the order are formulated, was held at Portland, Oregon, on August 4, 1953. Such hearing was held pursuant to a notice thereof which was published in the FEDERAL REGISTER (18 F. R. 4144) on July 15, 1953. That notice contained amendments to the order which had been proposed to the Secretary of Agriculture (hereinafter referred to as the "Secretary") by the Filbert Control Board, the administrative agency for operations under the order (hereinafter referred to as the "board") with a request for a hearing thereon. The notice also contained two amendments which had been proposed by John W. Wilkens, a filbert grower located at Huber, Oregon, and also two comparatively routine amendments which had been proposed by the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture.

The material issues, presented on the record of the hearing, are as follows:

(1) The amendment of § 997.31 so as to: (a) Delete the portion relating to original members and alternate members of the board and the references in the remainder to subsequent members and alternates as their successors in office;

(b) specify that the nominees and selectees for each group represented on the board must be members of the particular group; (c) add provisions precluding certain independent growers who also handle filberts from voting for, or serving as, independent grower representatives on the board; and (d) also add provisions precluding certain independent growers who are, or have been, employees of independent handlers during the fiscal year in which the election is held from serving as independent grower representatives on the board. Also, the amendment of § 997.33 so as to make corresponding changes therein, with certain exemptions therefrom in regard to current independent grower representatives on the board.

(2) The amendment of § 997.32 to provide a new title, the correction of a reference in the first sentence to § 997.31 (b) and also a new procedure for the nominations of independent grower representatives on the board, including authorization for the Secretary to change such new procedure in case it proves to be unsatisfactory.

(3) The amendment of appropriate sections of the order to authorize the exportation of unmerchantable filberts which meet specified quality and size requirements, including authorization for the subsequent modification of such requirements by the Secretary in certain circumstances, the handling of such exportations either by the board or by handlers acting as its agents under its direction and supervision, the imposition of administrative assessments on the quantities which are so exported, and appropriate inspection, certification, and labeling requirements in that regard. Also, the amendment of §§ 997.80 and 997.81 so as to make it clear that the reporting requirements contained therein will continue to apply only to merchantable filberts.

(4) The amendment of §§ 997.62 and 997.90 so as to change, from August 15 to August 20, the final date for the submission by the board to the Secretary of its estimates and recommendation with respect to the salable and surplus percentages for a fiscal year, and also its recommendation, with supporting data, as to its expenses for such fiscal year, as well as to delete certain obsolete provisions in § 997.90.

(5) The amendment of § 997.18 so as to delete that portion which identifies the first fiscal year.

(6) The amendment of § 997.60 so as to delete that portion of the first sentence after the proviso, which specifies the salable and surplus percentages for the first fiscal year, and so as to delete the word "subsequent" before the words "salable and surplus percentages" in the second sentence.

(7) The amendment of § 997.63 so as to delete the last sentence, which specifies the withholding percentage for the first fiscal year.

(8) The addition of a new section (§ 997.23) to define "part" and "subpart."

(9) The making of such other changes in the order as may be necessary to

make the entire order conform with the specific amendments thereof which are herem proposed for adoption.

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

(1) Section 997.31 of the order should be amended as follows: (a) The portion relating to the original members and alternate members of the board and the references in the remainder to subsequent members and alternates as their successors in office should be deleted; (b) that portion of the present second paragraph (now lettered (b)) which precedes the delineation of the six handler and grower groups which are granted representation on the board should be reworded so as to specify that the nominees and selectees for each of such groups must be members of the particular group; (c) a provision should be added which would preclude a grower who is not a member of a cooperative marketing association (i. e. an independent grower) from voting for, or serving as a representative of such independent growers if, during the fiscal year in which the election is held, he handled any filberts other than those which were produced by him; and (d) a provision should also be added which would preclude an independent grower who is, or who has been, an employee of a filbert handler during the particular fiscal year in which an election is held from serving as a representative (either as a member or as an alternate member) of independent growers on the board for the succeeding term. In line with the above conclusions, § 997.33 of the order, which relates to the qualifications for members and alternate members of the board, should be amended so as to require the automatic disqualification of any independent grower representative who, during his term of office, either serves as an employee of a filbert handler or handles filberts of other than his own production as aforesaid, except that such disqualification provisions should not apply to any existing independent grower representative during the remainder of his current term of office insofar as relates to actions which would have disqualified him if the presently proposed restrictions had been in effect at the time of his selection.

With respect to the proposed change set forth under (a) above, present § 997.31 is divided into two parts which are separate and distinct from each other. The first part (designated as paragraph (a)) relates exclusively to the original members and alternate members of the board, whose terms of office as such have long since expired. The second part (designated as paragraph (b)) relates to subsequent members and alternate members of the board, and it contains complete and adequate provisions in that connection. In these circumstances, it is obvious that the further continuance in the order of the special provisions relating to the original members and alternate members of the board would serve no useful purpose, and they should, therefore, be deleted. Since the provisions relating to

subsequent members and alternate members will hereafter apply to all existing and future representatives on the board, it is equally obvious that the reference to them as successors should be stricken. The latter changes would involve the deletion of the heading "Successor members" from the present paragraph (b) the elimination of the letter reference before said paragraph, and the deletion of the words "The Successors of" from the first sentence of said paragraph.

With reference to the proposed change set forth under (b) above, the present provisions leave each group free to nominate, and the Secretary free to select, any representatives which may be desired, and regardless of whether such persons are members of the particular group. However, it was stated in the Decision which preceded the issuance of the original order that: "Successors to the original members should be appointed annually by the Secretary from specified groups" (14 F. R. 5657), and this practice has been followed. The present proposal to restrict specifically the nominations and selections of representatives for each group to persons who are members of that group has been approved unanimously by the board, and it is the general practice of this Department to observe the wishes of the particular industry in connection with this aspect. Its adoption would, therefore, not only be in accordance with the practice which has been followed up to this time, but it would also insure that such practice would be followed in the future, as is desired by the filbert industry.

In regard to the proposed change set forth in (c) above, it was argued on behalf of the majority of the board that every grower who also qualifies as a handler should be precluded from voting for, or serving as, an independent grower representative. On the other hand, a member of the board, supported by other members of the industry, argued that this prohibition should not apply unless such grower had, during the preceding fiscal year, handled a quantity of filberts produced by others in excess of the quantity of filberts of his own production which he had handled during that period.

The order definition of "handler" (§ 997.9) is such that any person who handles 250 pounds, or more, of filberts during any fiscal year is so classified and becomes subject to the regulation. Neither of the two proposals is intended to change the present provisions in that regard. In other words, the sole objective of each proposal is to restrict the right of an independent grower who also engages in handling operations to vote for, or serve as, an independent grower representative on the board, the difference between them being the extent of the handling operations which should be deemed sufficient to justify the imposition of the restrictions. As indicated above, the board's proposal would fix the line of demarcation at 250 pounds, whereas the other (or the Wilken's) proposal would base the determination on whether the particular grower had handled a quantity of filberts produced by others in excess of the

quantity of filberts of his own production which he handled.

It was generally agreed that, of the approximately 3,000 independent growers of filberts in the production area, only 23 growers had also qualified as handlers (i. e., handled 250 pounds or more) of filberts during the preceding fiscal year, and that this is fairly representative of the situation in that regard which had existed in other years under the order operations. Of these 23 grower-handlers, 4 handled approximately 16.5 percent of the total filbert tonnage handled during the period, whereas the remaining 19 filbert handlers handled only 1.6 percent of the total filbert tonnage which was so handled, and some of the latter handled only filberts of their own production while some also handled filberts produced by others.

It was argued on behalf of the board that independent growers should be represented only by "pure" growers; that is, by growers who have no connection with filbert handling operations in excess of 250 pounds per fiscal year. This view was predicated on the basis that the fundamental philosophies of the two segments conflict with each other, in that the grower approach is to maximize the returns from their crops by obtaining the highest prices obtainable for it, whereas the handler approach is to prevent the price from reaching a point where the entire salable portion of the crop cannot be sold, thus leaving them with unduly large carry-overs. It was contended that the handling activity of a grower to such a small extent as 250 pounds of filberts during a fiscal year might influence his interest or viewpoint so that he would not reflect accurately the grower philosophy. In this connection, it was pointed out that the order provides for equal representation on the board as between independent handlers and independent growers, and it was stressed that the maintenance of this equality of balance between the two segments should not be disturbed by permitting independent growers to be represented by any person who is "handler-minded" to any degree.

It was argued on behalf of the other (or the Wilken's) proposal that the adoption of the board's proposal would amount, in effect, to the disenfranchisement of many, if not most, of the existing grower-handlers, in that they would be precluded from voting for, or serving as, independent grower representatives, and, in view of the small tonnages handled by them as compared with the tonnages handled by regular independent handlers and the fact that independent handler votes are weighted on the basis of tonnages handled, any votes which they might cast in the latter connection would necessarily have a negligible effect. It was testified, without contradiction, that during the past several years few growers have been able to derive a substantial profit from their growing operations; that this has been due primarily to the fact that production costs have approximated the sales prices; that some of the more resourceful and aggressive growers have attempted to im-

prove this situation by processing and marketing all, or a part, of their respective productions; and that such "disfranchisement" of grower-handlers in this category is unfair and unjust, because such persons are still primarily growers having a grower viewpoint.

It is believed that a distinction in this connection should be made between a grower who processes and markets only filberts of his own production and a grower who also processes and markets filberts which were produced by others. It seems clear that, in the latter situation, the grower's handling actions have advanced beyond the point where he may properly be regarded as having confined such operations to those which are consistent with his operations as a grower. In other words, when he goes into the open market and buys filberts produced by others for the purpose of processing and selling them at a profit he is engaging in handling as a regular, recognized handler, and he should be treated as such. Therefore, such a person should be precluded from voting for, or serving as, an independent grower representative, but such voting and serving on his part should be from the standpoint of independent handlers.

On the other hand, a grower who processes and sells only filberts of his own production is not believed to be departing so drastically from grower operations that he should be considered as an independent handler, rather than as an independent grower. Such action in those circumstances is considered to be normal and natural in that the grower thereby enables himself to continue in business as a grower, which he might not be able to do otherwise. The nature of these situations is such that the grower-handlers who fall in this category will presumably not handle a large volume of filberts in comparison with the total volume of filberts handled, either individually or in the aggregate. Therefore, any "handler viewpoint" which may conceivably arise from such handling should be relatively minor. In any event, it is believed that this is outweighed by the fact that to refrain from granting grower-handlers who fall in this category the same voting and serving privileges as are afforded other independent growers would be unfair and inequitable under the circumstances. While a fiscal year begins on August 1, the term of office of the members and alternate members of the board begin on "the first Tuesday after the first Monday in April," and the nominations in that connection are required to be submitted to the Secretary not later than March 20th. It is, of course, desirable that the base period be that which is the most current one which is practicable for use. It is concluded that, insofar as the amendment in this regard which is herein proposed to be adopted is concerned, a practicable and reasonably current base period for use would be the fiscal year in which the election is held up to the time of such election. If, at the time of such election, a grower-handler should qualify thereunder, he should be eligible to vote and to be nominated. However, if, after nomination, he should handle any filberts which have been pro-

duced by another, he should thereupon become ineligible for selection.

Considerable testimony was presented at the hearing with respect to the desirability of amending the provisions in this connection so that the board may be able to ascertain with reasonable certainty which grower-handlers should vote and serve as independent growers and which should vote and serve as independent handlers. It is believed that this objective would be accomplished by the proposal which is proposed herein for adoption, in that grower-handlers who handle filberts produced by others would automatically be placed in the independent handler group. The remaining grower-handlers would presumably wish to remain in the independent grower group for voting purposes, in that their relative volume of handlings as compared with those of regular independent handlers would be so insignificant that their voting power in the latter group would be negligible.

As regards the proposed change which is set forth under (d) above, it is concluded that a grower who is employed by a handler at any time during a fiscal year in which an election is held should be precluded from serving as a representative of independent growers, because such a person may be susceptible to influence, or pressure, by the particular handler in connection with his voting in board deliberations. Such an influence could reasonably be expected to arise from the employer and employee relationship, in that the employee may consider the retention of his present, or the resumption of his former, position as being of greater importance than the privilege of exercising his free, and untrammelled, judgment in voting in the board deliberations. This possibility is enhanced by reason of the fact that balloting by the board is not secret, and how each member or alternate member acting in the place of a member votes is readily ascertainable. The possibility of the exercising of such influence or pressure should be avoided. In this connection, there are some growers who perform only part time work for handlers, and who are normally not so employed at the time the elections are held. Nevertheless, some such persons presumably would expect to obtain reemployment when their services are needed again. Thus, the prohibition should apply to them the same as to growers who are employed by handlers at the time the election is held.

It is possible, of course, that a grower may accept employment by a handler with no expectation or desire, after its termination, that he will accept such employment again. Obviously such a person should not be precluded indefinitely, after the termination of such employment from serving as an independent grower representative in those circumstances. It is believed to be logical and reasonable to fix the period for determining the matter of eligibility or ineligibility in this connection as the fiscal year in which the election is held. Such period would serve to cover under the preclusion growers who serve as employees of handlers only during the peak,

or busy season, and, at the same time, it would afford former employees who no longer intend to accept future employment to reacquire eligibility after a reasonable period to serve as independent grower representatives. It is possible that a grower who is nominated to serve as an independent grower representative may have met this eligibility requirement at the time of his nomination but subsequently accepts employment by a handler before his selection and qualification. In such an event, he should automatically become ineligible for selection.

The indicated proposed changes in § 997.33 of the order are desirable, except as indicated below, in order to insure that an independent grower representative will not engage in any of the prohibited actions (i. e., either handling filberts produced by others or being employed by a handler) during his term of office. This latter proposed restriction should not apply to an existing member of the board, during his present term of office, who would have been ineligible at the time of his selection if the proposed change had then been in effect. However, such exemption in that regard should be limited to the particular situation which existed at that time. For instance, if such a current member handled filberts produced by others, he should be permitted to do so for the remainder of his term of office without disqualification, but, if he was not also employed by a handler, he should not be permitted to accept such employment during his term of office, and vice versa. It is believed that such an exception would be reasonable and proper because the selection was made in those circumstances and it would not be fair or equitable to require that he now make an election between losing his official position or refraining from continuing the activity in question. But, as indicated, such prohibition should apply to any existing members in connection with whom either such situation did not exist at the time of their respective selections, as well as to all future selections, including the filling of all vacancies.

(2) Section 997.32 of the order should be amended in the following respects: (a) The title should be changed to read "nominations for members and alternates" instead of "nominations for successor members and alternates," and the reference in the first sentence to § 997.31 (b) should be changed so as to refer to § 997.31, and (b) the present provisions, as set forth in the fourth, fifth, and sixth sentences, regarding the nominations of members and alternate members of the board to represent independent growers should be replaced with provisions setting forth a new procedure designed to insure that such nominations will represent more accurately the choice of these growers, with authorization for the Secretary to substitute another procedure for the proposed new procedure in case the latter should prove to be unsatisfactory.

With respect to (a) above, it was concluded in the discussion under the issue numbered (1) that the provisions in paragraph (a) of § 997.31 respecting the

original members and alternate members of the board should be deleted because they are obsolete, and that conforming changes should be made in paragraph (b) of said section relating subsequent members and alternates so as to refer to them as members and alternates. These proposed changes also involve the elimination of the letter reference before such paragraph. The indicated changes here would be in conformity with the indicated changes in § 997.31.

With reference to (b) above, the present provisions have proven to be unsatisfactory. They are very general in nature and experience has demonstrated that they do not set forth in sufficient detail or clarity the exact procedure which is intended to be followed in making nominations of this nature. The only existing requirements are that such nominations shall be submitted after balloting pursuant to announcements by press releases through this Department to the principal newspapers in the filbert producing areas in Washington and Oregon; that these releases provide pertinent information, including the names of the then incumbents of the positions and where ballots may be obtained; and that the ballots contain "full instructions as to their marking and mailing."

Since independent growers are unorganized and are scattered over the production area, it has not been practicable to hold assembled meetings of them for the purpose of selecting candidates and electing nominees. The holding of these meetings would also have entailed the expenditure of considerable sums of money. In any event, the present provisions do not require the holding of such meetings, but, instead, obviously contemplate mail balloting, and the only express provisions for the listing of candidates are that the names of the then existing incumbents shall be publicized. In an effort to "widen the field" for voting purposes, the board, in connection with the last such election, obtained the names of other potential candidates from county agents and independent handlers and added those names to the ballots. While the latest procedure represented an improvement over the previous practice of publicizing only the names of the then incumbents of the positions as candidates, it was still unsatisfactory because the other prospective candidates were not named by the independent growers themselves. It was testified that only about 7.5 percent of the eligible independent growers voted in the last nomination election, indicating that even the modified procedure referred to above was not sufficient to arouse their interest to a considerable degree.

In an effort to correct the present undesirable situation, the board proposed and argued at the hearing that the following substitute provisions should be incorporated in the order: (i) Names of the candidates to accompany the ballots shall be submitted to the board prior to February 10 of each fiscal year on petitions signed by not less than 10 independent growers of whom it has a record; (ii) each such grower may sign

only as many petitions as there are positions to be filled; (iii) ballots accompanied by the lists of candidates so submitted, together with instructions as to voting, shall be mailed to all independent growers of whom the board has a record; (iv) the qualified person receiving the highest number of votes for the position for which his name was placed on the ballots shall be nominated, except that, in case of a tie vote, the decision as to the nominee shall be made by lot; and (v) if the Secretary determines later that this new method is not satisfactory to independent growers, or it is too difficult or costly to administer, or it does not result in a sufficient number of qualified candidates, or it needs to be changed for other reasons, he is authorized to put another method in effect on the basis of the board's recommendation or other pertinent available information.

It is concluded that the proposed new procedure, as outlined in the preceding paragraph, should be adopted in lieu of the existing procedure, except that the proposed procedure for deciding by lot as to the nominee in case of a tie vote is not recommended. The justification given for each of the other aspects of the proposed new procedure enumerated in the second preceding paragraph and the conclusions which have been reached in those connections are set forth, in sequence, below:

(i) The petition method of obtaining the naming of candidates by independent growers is desirable because the other potential method of doing so through assembled meeting is neither practicable nor economical. The requiring of at least ten independent growers to sign each petition should be imposed because: It should promote greater interest and participation among them in the balloting for the several nominees; it represents a reasonable balance between making the naming of candidates unduly easy and unduly difficult; it should result generally in the naming of candidates of higher standing in the industry; the plan has been used in other comparable situations and has been found to operate satisfactorily; and last, but not least, it would insure the naming of such of the candidates by an appreciable number of the independent growers themselves, thus indicating a substantial interest in such candidate as a potential representative. The signers of the petition should be of record with the board as being independent growers in order that it may be in a position to determine whether they belong to that group. It was testified that the board will continue to keep current and accurate records of independent growers by checking with independent handlers each fiscal year in respect to the names of growers from whom they have received filberts. The fixing of February 10 as the time limit for the filing of the petitions is necessary to enable the board to hold the nomination election and submit the list of nominees to the Secretary by the required time of March 20.

(ii) It is contemplated that separate petitions will be submitted in connection with each independent grower position

which is submitted, i. e., separate petitions for each independent grower member position and separate petitions for each independent grower alternate member position. This is obviously necessary to delineate the candidates for each such position for balloting purposes. Likewise, each independent grower should be permitted to sign only as many petitions as there are positions to be filled. Stated differently, such a grower should be permitted to sign only one petition in connection with each of the positions which are to be filled for his group. Otherwise, a relatively small number of aggressive independent growers could, by signing petitions for various candidates for each position, dominate that aspect, or, at least, affect the matter disproportionately to their relative numerical importance.

(iii) It has been the practice up to this time for the board to mail to each independent grower of whom it has a record a ballot, accompanied by a list of the candidates for the several positions which are to be filled, along with appropriate instructions as to voting. This practice has been found to be satisfactory, and should be continued in effect. The new method contemplates, of course, that such candidates will be named by the independent growers themselves, rather than by other persons.

(iv) It has also been the practice up to this time to consider the candidate receiving the largest number of votes for each position as being the nominee for that position. Such practice should also be continued in effect, as it recognizes and enforces the wishes of the majority. It was argued that, in case of a tie vote in connection with the position to be filled, the nominee for that position should be determined by lot. No provision of this kind is included in the order in respect to other board positions, and it is not believed necessary to provide in the order a method of selecting the nominee for an independent grower position in case of a tie vote. In case of a tie, the names of the tied candidates should be submitted. In such event, the Secretary would select one of the tied candidates or some other qualified person.

(v) The basic objective of the provisions in question here is that they result in the representation of independent growers on the board by persons who are the best qualified obtainable and whom the majority of the independent growers desire to represent them. While it is believed that the proposed new procedure should accomplish these desirable results to a reasonably satisfactory degree, there can be no assurance that this will be the case in the absence of operations under them for a reasonable period of time. If the proposed new procedure should be adopted and experience should demonstrate that it is unsuitable for the purposes, such as by being unsatisfactory to the independent growers, or too difficult or costly to administer, or it does not result in a sufficient number of qualified candidates, or for other valid reasons, the Secretary should be permitted to put another procedure in effect without hav-

ing to undergo the considerable expense and effort which would be entailed in connection with a formal amendment of the order. It could happen that such a change of method would be desirable in a situation where amendments of other provisions of the order would not be needed.

In addition, any rules and regulations in that regard will need to be issued pursuant to the provisions of section 4 of the Administrative Procedure Act, which contemplates the giving of prior public notice of the proposed rule making action, the affording to the public, and particularly to the members of the filbert industry of an opportunity to participate in the rule making action through the submission of written data, views, and comment, and requires the consideration of such written data, views, and comment in connection with the issuance of the final regulation. In addition, careful consideration would be given to the views and recommendations of the board on the matter. Thus, the filbert industry will have an important voice in determining any substitute procedure in that regard which may be prescribed later.

The only additional expense which the adoption of the presently proposed method would entail would apparently be the cost of the petition forms, which it was estimated would be minor. This extra cost would presumably be more than offset by the fact that newspaper advertisements in connection with the balloting would no longer be needed. These advertisements have cost appreciable sums of money in the past.

It is required, in § 997.36 of the order, that a successor to fill any vacancy in a member or alternate member position on the board for the unexpired portion of the particular term shall "be selected in the manner provided in § 997.32, so far as applicable, within 30 days after such vacancy occurs." It was testified on behalf of the board that it should be practicable under the proposed new method to determine and submit to the Secretary the name of a nominee to fill such a vacancy in time to permit the selection of the successor within the 30-day time limit.

(3) The permissible methods for the regulation of fruits and vegetables (in which filberts are included by express reference) are set forth in section 8c (6) of the act. The basic objective of these methods (as indicated by the provisions of that section in conjunction with the provisions of section 2) is to cause an increase in the prices which are received by the producers of the particular commodity to as near the parity level as is reasonably practicable, consistent with the protection of the interests of consumers, by limiting the quantity which is available for sale in the normal market channels to a quantity which is no more than reasonably sufficient to meet such estimated demand. The remainder, or surplus, is left for disposition in channels which are not considered to be competitive with the normal market outlets. These permissible methods are of two general kinds, namely: (a) A separation of the production by prescribing the

meeting of specified minimum grade, size, or quality standards for the portion permitted to be sold in the normal market channels; and (b) a separation of the production by specifying so-called salable and surplus percentages for application against it. However, the act permits the use of a combination of the two methods in the same program, and, as is indicated below, the order provides for the regulation of filberts along that line.

The method of separation referred to under (a) above is effectuated by the provisions of §§ 997.50 and 997.53 of the order. By the terms of § 997.50, the handling of unshelled filberts, except as is provided in § 997.53, is prohibited unless and until they have been inspected and certified as meeting certain prescribed minimum standards of grade and quality. Those which are found to meet those minimum standards as a result of inspection by the official inspection agency are thereafter identified and referred to as "merchantable filberts" and are certified as such. The remainder are known and referred to as "unmerchantable filberts." The latter may be disposed of as shelled filberts, one of the two recognized surplus disposition outlets under the order, and the provisions of § 997.53 permit the disposition of unshelled unmerchantable filberts to any sheller for shelling. Assurance against the disposition of unmerchantable filberts in unshelled form (other than to a sheller for shelling) under the existing regulation is provided for through the requirement that all dispositions of unshelled filberts be preceded by inspections, certifications, and appropriate marking of the containers (see § 997.51) showing that they meet the indicated minimum standards. Thus, although, these unmerchantable filberts are not included in the surplus pool, they are, nevertheless, surplus filberts from the standpoint of the order operations. That this is the case was expressly recognized in the decision (14 F. R. 5659) which preceded the original issuance of the order.

The further method of separation, i. e., the one referred to under (b) above, is effectuated by the provisions of §§ 997.60 to 997.73, both inclusive, of the order. This method operates against the merchantable filberts after the first separation has taken place (and the merchantable filberts have been thus identified) by way of the fixing and application against them of so-called salable and surplus percentages. Those percentages are fixed on the basis of a consideration of the estimated total available supply of merchantable filberts for the particular fiscal year in relation to the estimated market demand for merchantable unshelled filberts for that year. That is to say, the salable percentage is designed to make available for the sale in such normal market outlets only that quantity which is considered to be reasonably necessary for that purpose. The balance, or the surplus portion, of the merchantable filbert supply, is required to be held by handlers for the account of the board and for disposition into outlets which are not

considered to be competitive with the normal market outlets for unshelled merchantable filberts. These recognized surplus outlets are for shelling and for export.

Filberts which are disposed of in shelled form have traditionally brought appreciably lower prices than filberts which are disposed of in the unshelled form. It was set forth in the notice of hearing and argued at the hearing that the existing provisions should be expanded to the extent of permitting certain of the larger sizes of unmerchantable filberts of the better quality to be exported because such action should result in increasing the overall returns to the producers. In other words, that such portion should be authorized to be disposed of in the other recognized surplus disposition outlet. It is concluded that such a modification of the order should be adopted as set forth below.

By terms of § 997.50 of the order, unshelled filberts, to qualify as merchantable filberts, must (a) be at least "U. S. No. 1 Medium," as then, and now, defined in the United States Standards for filberts in the shell (see 13 F. A. 4623), except that the portion of the tolerance provision in the U. S. No. 1 grade, for grade requirements, other than for type and size, reading "not more than five percent shall be allowed for blanks" are inapplicable, and (b) as to minimum standards of quality, be at least U. S. No. 1 grade as defined in the said standards, "with the aforesaid modified tolerance as to blanks." Those minimum standards for merchantability as unshelled filberts were prescribed from the standpoint that unshelled filberts were being sold primarily to the domestic trade, and experience had demonstrated that filberts of a lower grade and quality and of a smaller size were not acceptable to that trade, and, therefore, should not be sold to that trade at any time. On the other hand, it was recognized that filberts which fail to meet these minimum standards generally have some food value, which should be conserved and made available to the public, and that this could be done appropriately by permitting the sale of them in shelled form. (See the aforementioned decision, 14 F. R. 5659.)

The official records of the board show the following productions of unmerchantable or small size filberts: of the 1950-51 crop, 299,341 pounds, or 2.2 percent of the entire production; of the 1951-52 crop, 370,055 pounds, or 2.6 percent of the entire production; and, of the 1952-53 crop (based on the figures available on January 1, 1953) 1,775,527 pounds, or 8.1 percent of the entire production. The percentage of a crop consisting of a crop consisting of the smaller sized filberts varies from year to year, and results primarily from the kind of growing conditions which were in effect. In any event, there is a considerable quantity produced each year, and an appreciable poundage presumably would qualify for exportation under the proposal.

The bulk of export sales which have been made up to this time have been Cuba and Canada, but those sales have consisted of the better, or merchantable,

filberts. In this connection, the present order provides (in the definition of "trade demand" in § 997.21) for the consideration of prospective sales for the salable portion of the merchantable supply to Cuba and Canada "whenever the board is of the opinion that such distribution may be made to the particular country at prices to handlers approximating such prices on distribution in the Continental United States." In any event, consumer acceptance requirements for those two countries seems to approximate that of the United States.

However, such a situation does not appear to be the case with respect to other foreign countries. For instance, filberts produced in Turkey of smaller sizes than those now permitted to be sold in export under the order find a fairly ready sale in unshelled form in England and certain of the countries on the Continent of Europe. Past experience has demonstrated that it is not practicable to make sales of the larger sized, or merchantable, filberts in those countries last referred to, apparently because the economic situations in them are such that the potential buyers are financially unable to pay the prices which must be charged for them. Thus, such export sales should not interfere with the presently established export outlets for unshelled filberts of merchantable quality, but should be new business which could not be obtained otherwise.

During the last fiscal year (1952-53) the shelling of small size filberts by the cooperative marketing association resulted in a gross return of 13½ cents per pound, whereas medium size filberts were sold in so-called "off-shore export markets" at as low as 18 cents per pound, f. o. b. "Portland." This situation was not unique insofar as previous fiscal years are concerned. This margin of difference in the prices for the two outlets is considerable, and leaves room for an appreciable reduction in the export price and still affords a greater return to handlers, and through them to the producers, than could be derived from the disposition of small size filberts as shelled filberts. While no testimony was presented as to the prices for which small size filberts of Turkish production are being sold in unshelled form in England and European countries, the aforementioned margin indicates the probability that small size filberts of American production could be sold in those foreign outlets on a competitive basis.

The minimum size requirements (i. e., those in connection with U. S. No. 1, Medium) for merchantable filberts, as prescribed in the aforesaid United States Standards for filberts in the shell, are as follows: For round type varieties, those which will not pass through a round opening  $\frac{43}{64}$  of an inch in diameter, but will pass through a round opening  $\frac{50}{64}$  of an inch in diameter; and, for long type varieties, those which will not pass through a round opening  $\frac{31}{64}$  of an inch in diameter, but will pass through a round opening  $\frac{45}{64}$  of an inch in diameter. However, those standards also provide for the following size tol-

erances: "Twelve percent, by count, for filberts which fail to meet the size requirements for the size specified, but not more than five-sixths of this amount, or 10 percent, shall be allowed for filberts which pass through the smallest opening required for the size specified."

It was argued at the hearing that the same grade and quality requirements as are now required in connection with merchantable filberts should also be prescribed with respect to these small size filberts which are to be permitted to be exported, except that the size requirements should be smaller. The proposed size requirements for such small size filberts are as follows: For round type filberts, those which will not pass through a round opening  $\frac{40}{64}$  of an inch in diameter but will pass through a round opening  $\frac{45}{64}$  of an inch in diameter; and, for long type filberts, those which will not pass through a round opening  $\frac{33}{64}$  of an inch in diameter but will pass through a round opening  $\frac{37}{64}$  of an inch in diameter. The higher figure with respect to each type corresponds with the size requirement for that type which is set forth in the United States Standards for filberts in the shell for the small size of filberts. Thus, the proposal would authorize the exportation of that portion of the unmerchantable filberts which are also of merchantable quality, except for size, and the maximum differences in the minimum size requirements are only  $\frac{7}{64}$  of an inch in diameter in connection with the round type and only  $\frac{3}{64}$  of an inch in diameter in connection with the long type. In other words, such exportation of small size filberts will be limited to the best quality small size, or unmerchantable, filberts, in that they will have to meet the minimum requirements for merchantable filberts, other than for the indicated decrease in size. The adoption of this proposal will presumably leave an appreciable quantity of small size filberts which will not qualify for exportation, and which will have to be shelled the same as in the past.

It was testified without contradiction that any small size filberts of smaller than the respective minimum sizes proposed for exportation would not give consumer satisfaction in the countries to which it is expected that they will be exported because those filberts which are smaller than those sizes are generally irregular in shape, they often have blighted tips, the kernels may be malformed, and they do not ordinarily present a good appearance. Therefore, the exportation of sizes smaller than the minimum sizes indicated above should not be permitted, regardless of whether the estimated season average price for filberts for the particular fiscal year is above or below the parity level.

The indicated changes set forth above should properly be incorporated in the order by amending § 997.50, relating to pack specifications and minimum standards, so as to include them therein. The nature of the situation is such that the section should be broken down into paragraphs which will cover merchantable filberts and small size filberts for export separately where that action is reason-

ably necessary and appropriate. As indicated below, the putting of this proposal into effect will entail the addition, further along in the order, of a new section (to be numbered 997.76) to cover the details of the exportation of these small size filberts generally similar to the details in that connection which are now set forth in § 997.74 with respect to the exportation of merchantable surplus filberts. Reference to this new section should, therefore, be incorporated in the first sentence of amended § 997.50 along with the present reference to § 993.53.

The present provisions in § 997.50 authorize the modification of the pack specifications and minimum standards for merchantable filberts "at any time it appears that such action would tend to effectuate the declared policy of the act." This authorization for modification should be expanded to cover the small size filberts which are permitted to be exported for the same reasons it was provided for in the case of merchantable filberts. In fact, it may be even more probable that the presently proposed standards in connection with small size filberts for export will need to be modified, in that the outlet will be a new one, and the exact standards which are needed to serve the purpose will have to be determined later in the light of operational experience. If it develops that changes should be made, such action should be taken promptly and without having to do so through formal amendment proceedings. As is now the case in regard to merchantable filberts, any such changes should be made by the Secretary after due consideration of the board's recommendations and other available pertinent data.

To insure that the pack specifications and minimum standards with respect to merchantable filberts are observed by handlers, provisions for the inspection by the official inspection agency for each such lot handled or to be handled by each handler, the certification of each such lot, as to the meeting of such specifications and standards, the inclusion of certain other specified pertinent information in the certificate, and the fixing of appropriate seals, stamps, or tags to the containers are now contained in § 997.51 of the order. In case the pending proposal to permit the exportation of the indicated small size filberts is adopted, the provisions of § 997.51 should be modified to make these requirements apply also to such small size filberts. The need for this action is believed to be too obvious to require any discussion.

The detailed mechanism for the physical disposition of merchantable surplus filberts in export is now contained in § 997.74 of the order. Briefly, this mechanism is as follows: such exports may be made only by the board; any handler desiring to make such exportation shall deliver to the board the surplus to be exported, but the board shall be obligated to sell in export only those quantities for which it may be able to find satisfactory export outlets; any surplus which the board is unable to export shall be returned to the handler delivering it; such export sales shall be made only on execution of an agreement to prevent reimport-

tation into the United States, and, in case of export to Canada or Mexico, the filberts may be sold only on the basis of a delivered price, duty paid; a handler may be permitted to act as an agent of the board, upon such terms and conditions as the board may specify, in negotiating export sales, and, when he so acts, he shall be entitled to receive a selling commission of five percent of the export sales price, f. o. b. area of production; and the proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose merchantable surplus filberts are exported.

This mechanism was evolved after careful and thorough consideration at the promulgation hearing which preceded the issuance of the present order, and the several steps, together with the respective reasons therefor, were set forth (see 14 F. R. 5664) in the decision in that connection. These steps are obviously appropriate and necessary to enable the board to exercise the supervision and control adequate to insure against the prohibited disposition of the merchantable surplus into normal market outlets. It was contemplated that such dispositions in export would normally be made through certain of the handlers as agents, particularly those handlers who have business connections in foreign countries through whom they are able to negotiate sales of filberts in those countries. In cases where they sell their own merchantable surplus in export, they are entitled to receive the net proceeds therefrom, after the deduction of all actual and necessary expenses. In any case where a handler sells in export the merchantable surplus of another handler, the selling handler receives only the established commission of five percent of the export sales price, f. o. b. area of production, and the handler for whom the export was made receives the net proceeds remaining after the payment of actual and necessary expenses, including the specified sale commission.

The same mechanism should be provided for the physical disposition of the small size filberts in export, in that the circumstances surrounding the exportations of the two categories are generally similar, and obviously require the same safeguards to prevent their wrongful dispositions in normal market outlets. In fact, the only substantial difference is that, under the pending proposal, it will be permissible to export filberts of a smaller size than has been permitted up to this time. This difference has no significance in the present connection. It should be borne in mind that the possibility of this wrongful disposition in normal market channels will have been enhanced by reason of the fact that they will have been inspected and certified as meeting the specifications and standards prescribed in that connection. While these are lower than those which are prescribed for merchantable filberts, the certification aspect alone should make this wrongful disposition more feasible. While the provisions in this connection on the two categories should be similar, they should, in the interests of clarity, be set forth in separate sections. This may be done appropriately

by retaining unchanged the present section (§ 997.74) relating to the disposition of merchantable surplus filberts in export and by adding a new section (997.76) to prescribe similar requirements with respect to the disposition of the small size surplus in export.

It is apparently contemplated by the board that, in the event, the pending proposal to permit the exportation of the small size filberts is adopted, it will include in the terms and conditions of its agency agreements with handlers specifications as to the minimum and maximum prices for which they may sell such filberts in export. This action is necessary and proper in connection with the export disposition of surplus, in that it enables the board on the one hand to prevent the making of the sales at such a low price as to make profitable the reimportation and wrongful disposition of it in normal market channels, and on the other hand to prevent the making of such sales at such a high price as to interfere unduly with the selling by handlers of their merchantable salable filberts. Except as may be exempted by law, contracts and combinations to fix prices are prohibited by the so-called antitrust laws. Such an exemption is provided for in section 8b of the act insofar as authorized and legally permissible operations under marketing agreements and orders are concerned. However, the fixing of prices under programs of this nature is restricted to the surplus portions. Certain questions which were asked at the hearing seemed to imply that these small size filberts from the unmerchantable portion were not actually a part of the surplus, but that they were being designated as such in order to bring the contemplated price fixing actions within the ambit of the exemption. This is not the case. Such action in those circumstances would constitute an obvious attempt to accomplish indirectly a result which could not legally be accomplished directly, and it would not be approved. As has been demonstrated above, unmerchantable filberts constitute a part of the surplus, and they have been consistently so recognized since the order was put into effect. So long as their disposition is confined to the shelled form, the circumstances are such that there is no need to refer specifically to them in the order as surplus filberts, inasmuch as their lack of certification insures that they will not be disposed of in normal market channels. This lack also relieves the board of the obligation to supervise such dispositions as closely as is necessary in the case of merchantable surplus, and, thus, provisions in that regard have not been necessary. However, for reasons which have been set forth above, the adoption of the present proposal will require the certification and close supervision of the small size filberts which are exported, the same as for merchantable surplus filberts which are exported, and they will need to be covered under the order similar to merchantable surplus filberts insofar as exportation is concerned.

There was also considerable discussion at the hearing to the general effect that

the same size tolerances which apply to merchantable filberts should also be made applicable to the small size filberts which are permitted to be exported, and that, if the proposed amended order language in the latter connection does not make this clear, it should be revised so as to do so. The size tolerances in question are contained in the aforementioned United States Standards for filberts in the shell, and the provisions in that connection are quoted above. They are expressly made applicable to each of the four recognized size groups of filberts, namely, jumbo, large, medium, and small. The first three size groups (i. e., jumbo, large, and medium) come within the merchantable category if they are also of the U. S. No. 1 grade. The application of such tolerances to merchantable filberts arises from the fact that those size groups are included "as now defined in United States Standards for filberts in the shell." As stated heretofore, the small size filberts whose exportation is proposed to be permitted fall in the upper ranges of the small size category as defined in those standards, and it is believed to be reasonable and proper to apply the same size tolerances to them in the present connection. In order to insure that this will be done, it is concluded that provisions for the application of such size tolerances in the latter connection should be included after the descriptions of the applicable minimum and maximum size ranges (in proposed § 997.50 (c)) in the form of a proviso.

It was also proposed and argued at the hearing that § 997.91 of the order, relating to assessments, should be amended so as to impose such assessments also against the small size filberts which are exported. At the present time, the provisions require the imposition of assessments against each handler "for each pound of merchantable filberts certified for him, including those certified for handling and also those certified for surplus." It was stated that the proposed new procedure in connection with the supervision and control by the board in connection with the exportation of the small size filberts should entail the incurring of the same operational expense as is incurred in connection with its supervision and control of merchantable filberts. Therefore, these small size filberts should bear their proportionate part of the administrative expenses. It seems clear that the adoption of the pending proposal to permit the exportation of small size filberts will increase the costs of operation beyond that which the operation of this program would cost without it. The act requires, in section 10 (b) (2) (ii) that each handler shall pay to the administrative agency his pro rata share of the costs of the operation of a program of this nature. Of course, such a proration of the costs as between the several handlers should be fair and equitable. It is concluded that the imposition of the assessment against the small size filberts which are exported would be in line with those requirements, in that they would be paid, in each instance, by the handler who benefited therefrom. For instance, if a handler

should export his own small size filberts, such assessment would be paid from the proceeds, and thus, would reduce his net returns to that extent. But, if a handler should export the small size filberts of another handler, the payment from the proceeds to cover assessments would be regarded as a part of the actual and necessary expenses of the sale, and would reduce, to that extent, the net proceeds from the sale which are payable to the handler for whom the export was made. Thus, fair and equitable proration of costs would be achieved, in that each handler would pay in proportion to the relative costs to the board for the supervision and control by it over his dealings. In this connection, the cost of supervision of the disposition of unmerchantable filberts as shelled filberts is comparatively negligible, and the present practice of not collecting assessments on such filberts should be continued in effect.

The adoption of the present proposal will involve certain other relatively minor and obviously appropriate conforming changes in the order. These changes are as follows: (a) The deletion of the center heading reading "Surplus Control" immediately preceding § 997.60 and the substitution of a center heading reading "Merchantable Surplus Control;" (b) the amendment of the first sentence of § 997.64 by inserting the word "merchantable" between the words "handle" and "unshelled;" (c) the amendment of §§ 997.60 to 997.75, both inclusive, and of §§ 997.80 and 997.81 so as to insert the word "merchantable" before the word "surplus" wherever the latter word is not now preceded by the word "merchantable;" and (d) the addition of a new center heading, reading "Control of Small Size Filberts For Export," between present § 997.75 and proposed new § 997.76.

So-called conforming changes similar to those set forth in (c) above (i. e., inserting "merchantable" before "surplus" where such is not now the case) were also set forth in the notice of hearing and argued at the hearing with respect to §§ 997.83 and 997.91. However, these latter proposals should not be adopted in their entirety.

Section 997.83 relates to the verification of reports, and it was argued that this would be confined to the specified reports on merchantable filberts which handlers are required to file with the board by the provisions of §§ 997.80 and 997.81 and also that it was not the present intention of the board to require the filing of any reports with respect to the small size filberts which are exported. Except to the extent indicated below, it is concluded that this proposal with respect to § 997.83 should not be adopted. This § 997.83 is the one which authorizes the board, through its representatives, to enter the premises of handlers and to inspect all of their filberts and business records and requires the handlers to cooperate in those connections. It is clearly necessary that the board have this authority in regard to small size filberts which are exported in order that it may assure itself that they are actually exported and also that they are not subsequently reimported and wrong-

fully placed in normal market channels. Further, certain of the documents which will need to be submitted to the board pursuant to the provisions of new § 997.76 may partake of the nature of reports, and, in any event, the board should be able to make appropriate verifications as to their accuracy when that seems to be desirable. Also, in addition to the specific reports on merchantable filberts which are required under §§ 997.80 and 997.81, the board is authorized (in § 997.82) to require the filing of any other reports it may deem necessary to enable it "to perform its duties and to exercise its powers hereunder." It is considered that this general reporting requirement authority contained in § 997.82 will apply to the small size surplus which is exported in case a need for reports in that connection should arise later. The one exception to the foregoing is the last sentence of § 997.83, which requires the separate storage of surplus filberts. It is obvious that this requirement should not be applicable with respect to the small size filberts which are exported, and the word "merchantable" should be inserted before the word "surplus" in that sentence.

In regard to § 997.91, relating to assessments, it was apparently overlooked that another amendment which was proposed at the hearing and which is recommended above for adoption, would amend that section so as to provide for the imposition of assessments against small size filberts which are exported, as well as against all merchantable filberts. The present aspect is being taken care of in connection with such other amendment.

In conclusion, some apprehension was expressed at the hearing with respect to the possibility that the reference in the amended order to the small size filberts which are permitted to be exported as surplus may serve to imply that they will be eligible for use in satisfying handlers' surplus withholding obligations with respect to their merchantable filberts, and also possibly that the present definite distinction between merchantable filberts and unmerchantable filberts will be obscured. It was testified that these results would be undesirable and should not be allowed to occur. In order to remove any doubt in that regard, it is not contemplated or intended that the adoption of the proposal to permit the exportation of the small size filberts will make any change in the effect of the existing provisions with respect to merchantable filberts, and particularly with respect to surplus merchantable filberts. Special care has been taken in redrafting the order, as proposed to be amended, to make it clear that this will be the case.

(4) Section 997.62 of the order should be amended so as to extend, from August 15 to August 20, the final date by which the board is required to submit to the Secretary its estimates and recommendation in connection with the fixing of the salable and surplus percentages on merchantable filberts for a fiscal year. Further, § 997.90 of the order should likewise be amended so as to make the same extension of the final date by which the board is required to submit to the

Secretary its recommendation, together with all supporting data, as to its expenses for the fiscal year, and also the proviso at the end of the second sentence, relating to the time of such submission for the first fiscal year, should be deleted.

With respect to the recommended amendment of § 997.62, the Department's August estimate of filbert production, which is essential to the board in formulating its estimates and in determining its recommendation as to the salable and surplus percentages for a fiscal year, is ordinarily released to the public on August 10. It could happen, however, that it would not be released until a day or more later. In any event, the release of the estimate on August 10 would provide a maximum period of only five days in which the board manager must analyze the information and prepare on the basis thereof the necessary statistical tables, furnish such information and tables to the individual members of the board, and for such members to study and relate the data to the filbert situation and determine the estimates and recommendation which should be submitted to the Secretary. Also, there is for consideration the fact that the board members are scattered over the area and some time should be allowed for the transmittal of the information and tables to them for consideration prior to their attendance at the particular meeting, which now may be held not later than August 15. In these circumstances, the granting of ten, instead of five, days for the purpose is believed to be fair and proper. It was testified that filberts normally begin moving to market during the early part of October, but, in some years, the movement begins during the last week in September. It should be practicable to fix the percentages in time to cover all such movements in case the proposed extension of time is granted.

With reference to the recommended amendment of § 997.90 to provide a similar extension of time for the submission of the proposed budget of expenses, and the supporting data, the board ordinarily considers that matter at the same meeting at which it considers the salable and surplus percentages for merchantable filberts. In fact, if it did not do so, an extra, and unnecessary, meeting would need to be held. Also, there is entailed in connection with the determination of the budget a consideration of the expense of the particular regulation which is contemplated and the necessity for insuring that the rate of assessment as applied to the estimated quantity of merchantable filberts will provide sufficient money to meet expenses of operation. Thus, the two matters should be considered at the same time. The proviso at the end of the second sentence of that section should be deleted because it is now obviously obsolete.

(5) Section 997.18 of the order contains a definition of the term "fiscal year" and delineates such period as being the 12 months from August 1 to the following July 31, both inclusive, "except that the fiscal year ending July 31, 1950, shall begin on the effective date of this subpart (October 1, 1949)." Since the quoted portion is now obsolete, in that

the period in question expired several years ago, it should be deleted.

(6) The proviso at the end of the first sentence of § 997.60 should be deleted because it is now obsolete. Such proviso fixed the salable and surplus percentages on merchantable filberts for the first fiscal year of the order operations at 75 percent and 25 percent, respectively. Also, the word "subsequent" before the words "salable and surplus percentages" in the second sentence should be deleted because its inclusion in that connection is no longer necessary or desirable. The deletion of such word would be in conformity with the deletion of the proviso at the end of the first sentence.

(7) The last sentence of § 997.63 should be deleted because it is now obsolete. Such sentence specified the withholding percentage for the first fiscal year of the order operations.

(8) The order should be amended so as to add a new section (designated as § 997.23) to define "part" and "subpart." The term "part" should mean the order regulating the handling of filberts grown in Oregon and Washington, and all rules, regulations, and supplementary orders issued thereunder, and the order regulating the handling of filberts grown in Oregon and Washington should be a "subpart" of such part. The use of such terms having those meanings would be in accordance with the requirements of the Federal Register Division for orders of this nature.

(9) It was testified, in effect, at the hearing that changes should also be made in provisions of the order not directly involved in connection with specific amendments of it which may result from this proceeding, but which are necessary to make such other provisions conform with any such specific amendments which are so adopted. Any such changes should, of course, be limited strictly to those which are obviously necessary and appropriate, and, other than to that extent, such changes should not affect the present meaning of such provisions. It does not appear necessary to make any such conforming changes of significance.

*Proposed findings and conclusions.*- At the conclusion of the hearing, the Presiding Officer fixed a period of time in which briefs from interested parties with respect to the testimony presented in evidence at the hearing and the conclusions to be drawn therefrom must be received by the Hearing Clerk of this Department. Such period expired some time ago, and no such briefs have been received.

*General findings.* (a) The findings hereinafter set forth are supplementary and in addition to the findings and determinations (14 F R. 5667 and 5694) which were made in connection with the original issuance of this marketing agreement and order, and all of such previous findings and determinations, other than the finding as to the base period for the parity computation, are hereby ratified and confirmed, except insofar as such previous findings and determinations may be in conflict with the findings set forth herein.

(b) The marketing agreement and order, as hereby proposed to be amended,

and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act.

(c) The marketing agreement and order, as hereby proposed to be amended, will be applicable only to persons in the respective classes of commercial and industrial activities specified, or necessarily included, in the proposals upon which the amendment hearing was held.

(d) There are no differences in the production and marketing of filberts in the production area covered by this marketing agreement and order, as hereby proposed to be amended, which make necessary different terms or provisions applicable to different parts of such area.

*Recommended amendment of the marketing agreement and order.* The following proposed amendment of the marketing agreement and order<sup>1</sup> is recommended as the detailed means by which the aforesaid conclusions may be carried out:

#### DEFINITIONS

§ 997.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 997.2 *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.; 63 Stat. 282)

§ 997.3 *Person.* "Persons" means an individual, partnership, corporation, association, or any other business unit.

§ 997.4 *Filberts.* "Filberts" means filberts or hazelnuts produced in the States of Oregon and Washington from trees of the genus *Corylus*.

§ 997.5 *Unshelled filberts.* "Unshelled filberts" means filberts the kernels of which are contained in the shell.

§ 997.6 *Merchantable filberts.* "Merchantable filberts" means all unshelled filberts meeting the pack specifications and minimum standards of quality prescribed pursuant to § 997.50 (b) or as such specifications and standards may be modified pursuant to § 997.50 (d)

§ 997.7 *Area of production.* "Area of production" means the States of Oregon and Washington.

§ 997.8 *Grower.* "Grower" is synonymous with "producer" and means any person engaged in a proprietary capacity, in the commercial production of filberts.

§ 997.9 *Handler.* "Handler" means any packer or distributor of unshelled filberts handling not less than 250 pounds of filberts during any fiscal year.

§ 997.10 *Packer.* "Packer" means any person who packs and handles unshelled filberts.

§ 997.11 *Distributor.* "Distributor" means any person other than a packer who handles unshelled filberts which have not been subjected, in the hands of a previous holder, to compliance with the surplus-control provisions hereinafter contained.

§ 997.12 *Cooperative handler.* "Cooperative handler" means any handler which is a cooperative marketing association regardless of where or under what laws it may be organized.

§ 997.13 *Sheller.* "Sheller" means any person engaged in the business of shelling filberts for any commercial purpose.

§ 997.14 *Pack.* "Pack" means a specific commercial classification according to size, internal quality, and external appearance and condition of filberts packed in accordance with any of the pack specifications prescribed pursuant to § 997.50.

§ 997.15 *To pack.* "To pack" means to bleach, clean, grade, or otherwise prepare filberts for market as unshelled filberts in any manner whatsoever.

§ 997.16 *To handle.* "To handle" means to sell, consign, transport or ship (except as a common carrier of filberts owned by another person), or in any other way to put into the channels of trade, either within the area of production or from such area to points outside thereof: *Provided,* That such sales or deliveries by growers to a packer for packing or a sheller for shelling or to a distributor within the production area, shall not be considered as handling.

§ 997.17 *Federal-State Inspection Service.* "Federal-State Inspection Service" means that inspection service on filberts which is performed within the States of Oregon and Washington by the United States Department of Agriculture or by said Department under a cooperative arrangement with either of such States pursuant to authority contained in any act of Congress.

§ 997.18 *Fiscal year.* "Fiscal year" means the 12 months from August 1 to the following July 31, both inclusive.

§ 997.19 *Handler carryover.* "Handler carryover" as of any given date means all merchantable filberts (except merchantable filberts held as surplus) wherever located, then held by handlers or for their accounts (whether or not sold) including the estimated quantity of merchantable filberts in ungraded lots then held by handlers and intended for packing as merchantable filberts.

§ 997.20 *Trade carryover.* "Trade carryover" means all merchantable filberts theretofore delivered by handlers and then remaining in the possession or control of the wholesale or chain store or supermarket trade, exclusive of filberts in retail outlets, as of any given date.

§ 997.21 *Trade demand.* "Trade demand" means the quantity of merchantable filberts which the wholesale, chain store and supermarket trade will acquire from all handlers during a fiscal year for distribution in the Continental United States, Alaska, Hawaii, Puerto Rico, and

<sup>1</sup> The provisions identified with an asterisk (\*) apply only to the proposed amendment of the marketing agreement and not to the proposed amendment of the marketing order.

the Canal Zone; except that there may also be considered in the making of such computation such acquisitions for distribution in Canada or Cuba, whenever the board is of the opinion that such distribution may be made to the particular country at prices to handlers approximating such prices on distribution in the Continental United States.

§ 997.22 *Control board.* "Control board" or "board" means the Filbert Control Board established pursuant to §§ 997.30 through 997.40.

§ 997.23 *Part and subpart.* "Part" means the order regulating the handling of filberts grown in Oregon and Washington, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of filberts grown in Oregon and Washington shall be a "subpart" of such part.

#### FILBERT CONTROL BOARD

§ 997.30 *Establishment and membership.* A control board consisting of seven members, with an alternate member for each such member, is hereby established.

§ 997.31 *Selection and term of office.* (a) Members and their respective alternates shall be selected annually by the Secretary for a term of one year beginning with the first Tuesday after the first Monday in April, and shall serve until their respective successors shall be selected and shall qualify. One member and one alternate member shall be selected from nominees submitted by each of the following groups, which nominees shall be eligible members of the respective groups which nominate them:

- (1) The cooperative handlers;
- (2) All handlers, other than the cooperative handlers;
- (3) The group of cooperative handlers or the group of other than cooperative handlers, whichever during the preceding fiscal year handled more than 50 percent of the merchantable filberts handled by all handlers;
- (4) Those growers of filberts who market their filberts through cooperative handlers;
- (5) All other growers of filberts;
- (6) Those growers whose filberts were marketed during the preceding fiscal year through the handler group specified in subparagraph (3) of this paragraph.

(b) The following additional restrictions shall apply to the growers who do not market their filberts through cooperative handlers: (1) Such a grower may not vote in a nomination election for a representative of his group if, during that portion of the fiscal year up to the time of such election, he handled any filberts which were produced by another grower, and such a grower shall not be selected to serve as a representative of that group, if, during the fiscal year in which the nomination election is held, he handled any filberts which were produced by another grower; and (2) such a grower who, at any time during the fiscal year in which the nomination election is held, was employed by a filbert handler shall not be selected to serve as such a representative, but he shall be entitled to vote in the nomination election.

(c) The seventh member and his alternate shall be selected after the selection of the first six members as provided for in this section, and after opportunity for such six members to nominate a seventh member and his alternate, who shall not be members of any of the six groups described in this section.

§ 997.32 *Nominations for members and alternates.* (a) Each of the six groups specified in § 997.31 may nominate one person as member and one person as alternate; and the six members first selected by the Secretary may nominate, by majority vote, one person as member and one person as alternate for that member. Nominations for each handler group shall be submitted on the basis of ballots to be mailed by the control board to all handlers in such group whose pack for the preceding fiscal year is on record with the control board. Nominations on behalf of growers who market their filberts through cooperative handlers shall be submitted on the basis of ballot cast by each cooperative handler for its grower patrons. Nominations on behalf of growers who market their filberts through other than cooperative handlers shall be submitted after ballot by such growers conducted as follows:

(b) Names of the grower candidates to accompany the ballot shall be submitted to the control board prior to February 10 of each fiscal year on petitions signed by not less than ten growers who market their filberts through other than cooperative handlers and who are of record with the control board; each grower may sign only as many petitions as there are persons to be nominated as members of the control board; ballots accompanied by the list of candidates submitted by petitions, together with instructions, shall be mailed to all growers who market their filberts through other than cooperative handlers and who are of record with the control board; the qualified person receiving the highest number of votes for the position for which his name was placed on the ballot shall be the nominee for that position, except that, in case of a tie, the names of the tied candidates shall be submitted. If the Secretary determines that this procedure is unsatisfactory to the growers who market their filberts through other than cooperative handlers, because it is too difficult or costly to administer, it does not result in the name of a sufficient number of qualified candidates being submitted with the ballot, or it should be changed for other reasons, he may change this procedure through the formulation and issuance of superseding regulations.

(c) All votes cast by cooperative handlers, handlers other than cooperative handlers, or for cooperative growers, shall be weighted according to the tonnage of merchantable filberts (computed to the nearest whole ton in case of fractions) recorded by the control board as certified for handling by the handler or for the cooperative grower group during the preceding fiscal year, and if less than one ton is recorded for any such handler or grower group, its vote shall be weighted as one vote. All votes cast by

individual growers shall be given equal weight. Nominations received in the foregoing manner by the control board shall be reported to the Secretary on or before March 20 of each fiscal year, together with a certificate of all necessary data and other information deemed by the board to be pertinent or requested by the Secretary. If such nominations of any group are not submitted as hereinbefore provided to the Secretary on or before that date, the Secretary may select the representatives of that group without nomination. If nominations for the seventh member or his alternate are not submitted on or before April 15 of any year, the Secretary may select such member or alternate without nomination.

§ 997.33 *Qualification.* Any person selected as a member or alternate of the control board shall qualify by filing a written acceptance of his appointment with the Secretary or his designated representative. Any member or alternate, who at the time of his selection, was a member of, or employed by a member of the group which nominated him and who thereafter ceases to be such a member or employee shall thereupon become disqualified to serve further and his position on the control board shall be deemed vacant. In the event any member or alternate member of the control board qualified and selected, in accordance with the provisions of §§ 997.31 and 997.32, to represent growers who market their filberts through other than cooperative handlers should, during his term of office, handle filberts produced by other growers, or become an employee of a handler, his position on the control board shall thereupon be deemed to be vacant: *Provided*, That these disqualification provisions shall not apply to any initial representative of such growers for the term which began in April 1953 in connection with the continuance, for the balance of such term, of either such prohibited handling or employment situation which existed when he was selected and qualified.

§ 997.34 *Alternates.* An alternate for a member of the control board shall act in the place and stead of such member (a) in his absence, or (b) in the event of his death, removal, resignation, or disqualification, until a successor for his unexpired term has been selected and has qualified.

§ 997.35 *Temporary substitutes.* In the event any member of the control board and his alternate are both unable to attend a meeting of the control board, any alternate for any other member nominated by the same group that nominated the absent member may serve in the place and stead of the absent member and his alternate, or in the event such other alternate cannot attend, or there is no such other alternate, such member or, in the event of his disability or a vacancy, his alternate may designate, subject to the disapproval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place and stead of such member. For the purposes of this section a cooperative handler group and a coopera-

tive grower group shall be considered the same group.

§ 997.36 *Vacancy.* To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate of the control board, a successor for his unexpired term shall be selected in the manner provided in § 997.32, so far as applicable, within 30 days after such vacancy occurs.

§ 997.37 *Expenses.* The members of the control board shall serve without compensation, but shall be allowed their necessary expenses.

§ 997.38 *Powers.* The control board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(d) To recommend to the Secretary amendments to this subpart.

§ 997.39 *Duties.* The duties of the control board shall be among other things as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary.

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees as it may deem necessary and to determine the salaries, define the duties and fix the bonds of such employees;

(e) To cause the books of the control board to be audited by one or more competent public accountants at least once for each fiscal year and at such other times as the control board deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made; and

(f) To investigate the growing, shipping, and marketing conditions with respect to filberts and to assemble data in connection therewith.

§ 997.40 *Procedure—(a) Organization and rules.* The members of the control board shall select a chairman from their membership and all communications from the Secretary may be addressed to the chairman at such address as may from time to time be filed with the Secretary. The board shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The board shall give to the Secretary or his designated agent and representatives the same notice of meetings of the control board as is given to members of the board.

(b) *Quorum.* All decisions of the control board, except where otherwise specifically provided, shall be by a majority vote of the members present. The presence of five members shall be required to constitute a quorum.

(c) *Permissive method of voting.* The control board may vote by mail or telegram upon due notice to all members: *Provided*, That voting by mail or telegram shall not be permitted at any assembled meeting of the board. When any proposition is submitted for voting by such method, one dissenting vote shall prevent its adoption by that method.

(d) *Right of the Secretary.* The members of the control board (including successors, alternates, or other persons selected by the Secretary) and any agent or employee appointed or employed by the control board, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every order, regulation, decision, determination, or other act of the control board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

#### CONTROL OF DISTRIBUTION

§ 997.50 *Pack specifications and minimum standards—(a) General restrictions as to handling.* In order to effectuate the declared policy of the act, and except as otherwise provided in §§ 997.53 and 997.76, no handler shall handle any unshelled filberts except those which have been certified by the control board as merchantable filberts.

(b) *Merchantable filberts.* Unless and until modified by the Secretary, after consideration of the control board's recommendations and other available pertinent data, unshelled filberts shall be deemed to be merchantable if they meet the following requirements:

(1) As to pack specifications, such filberts shall be "U. S. No. 1, Jumbo," "U. S. No. 1, Large," or "U. S. No. 1, Medium," as now defined in the United States Standards for filberts in the shell (13 F. R. 4623), except that the portion of the tolerance provision in the U. S. No. 1 grade, for grade requirements, other than for type and size, reading "not more than five percent shall be allowed for blanks" shall not be applicable; and

(2) As to minimum standards of quality, shall be U. S. No. 1 grade as defined in the aforementioned standards, with the aforesaid modified tolerance as to blanks, and the lower limit of medium size as defined in such United States Standards for filberts in the shell.

(c) *Small size filberts for export.* Unless and until modified by the Secretary, after consideration of the control board's recommendations and other available pertinent data, unshelled filberts which are below the minimum requirements for merchantable filberts, as set forth in paragraph (b) of this section, only with respect to size may be exported pursuant to the provisions of § 997.76 if they meet the following size requirements: Round type filberts which will not pass through a round opening  $\frac{4}{64}$  of an inch in diameter but will pass through a round opening  $\frac{4}{64}$  of an inch in diameter, and long type filberts which will not pass through a round opening  $\frac{3}{64}$  of an inch in diameter but will pass through a

round opening  $\frac{3}{64}$  of an inch in diameter: *Provided*, That 12 percent, by count, shall be allowed for those filberts which fail to meet these size requirements but not more than  $\frac{5}{64}$  of this amount, or 10 percent, shall be allowed for filberts which pass through the smallest opening specified for the respective type.

(d) *Modifications.* The aforementioned pack specifications and minimum standards for unshelled filberts as prescribed in paragraphs (b) and (c) of this section may be modified, at any time that it appears that such action would tend to effectuate the declared policy of the act, in which event unshelled filberts desired to be certified must meet the applicable modified pack specifications and minimum standards in order to be considered as merchantable filberts or as small size filberts for export, as the case may be.

(e) *Above parity situations.* The provisions of this section relating to minimum standards of quality for merchantable unshelled filberts or small size filberts for export, as the case may be, and the applicable grading and inspection requirements pertaining thereto, within the meaning of section 2 (3) of the act, and any other provisions relating to the administration and enforcement thereof, shall continue in effect irrespective of whether the estimated season average price for filberts is in excess of the parity level specified in section 2 (1) of the act.

§ 997.51 *Certification of merchantable filberts and surplus small size filberts for export.* Each handler, at his own expense, shall obtain a certificate for each lot of merchantable filberts handled or to be handled by him, and for each lot of surplus merchantable filberts, and also for each lot of surplus small size filberts for export disposed of by him as agent for the control board. Said certificates shall be obtained from the Federal-State Inspection Service. All such certificates shall show, in addition to such other information as the control board may specify, the identity of the handler, if for export, the country of destination, the quantity and pack of filberts in such lot, markings (if any) on the containers, including brands or labels, and that the filberts covered by such certificates conform to the pack specifications and minimum standards of quality prescribed pursuant to § 997.50 for merchantable filberts or for surplus small size filberts for export, as the case may be. All lots so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of the control board, or of the Federal-State Inspection Service.

§ 997.52 *Copies of certificates.* The inspector shall furnish to the control board as many copies of each such certificate as it may request.

§ 997.53 *Filberts for packing or shell-ing.* Nothing contained in this part shall be construed to prevent any person from selling or delivering, within the area of production, unshelled filberts, other than

merchantable filberts, to any packer for packing or sheller for shelling.

#### MERCHANTABLE SURPLUS CONTROL

§ 997.60 *Salable and surplus percentages for merchantable filberts.* The salable and surplus percentages for merchantable filberts for each fiscal year shall be fixed by the Secretary at such amounts as in his judgment will most effectively tend to accomplish the purposes of the act. In fixing such salable and surplus percentages, the Secretary shall give consideration to the ratio of the estimated trade demand to the sum of the estimated production of merchantable filberts and the handler carryover (with appropriate adjustment for such handler carryover as may have theretofore contributed to merchantable surplus) the recommendation submitted to him by the control board, and such other pertinent data as he deems appropriate. The total of the salable and surplus percentages as fixed each fiscal year shall equal 100 percent.

§ 997.61 *Increase of salable percentage.* At any time prior to February 15 of any fiscal year, the Secretary may, on request of the control board (or if the control board shall fail so to request, on request of two or more packers who have handled during the immediately preceding fiscal year at least ten percent of the total tonnage handled by all packers during such fiscal year) and after a finding of fact, based on such revised and current information as may be pertinent, that the merchantable filberts available for handling will not be sufficient to supply the trade demand, increase the salable percentage to conform to such new relation as may be found to exist between trade demand and available supply.

§ 997.62 *Estimated carryover trade demand, and production.* (a) To aid the Secretary in fixing the salable and surplus percentages for merchantable filberts, the board shall furnish to the Secretary, not later than August 20 of each fiscal year, the following estimates and recommendation, each of which shall be adopted by at least a majority vote of the entire control board:

(1) Its estimate of the quantity of merchantable filberts to be produced and packed during such year.

(2) Its estimate of handler carryover as of August 1,

(3) Its estimate of trade carryover as of August 1,

(4) Its estimate of the total trade demand (on the basis of prices not exceeding the maximum prices contemplated in section 2 of the act) in determining such trade demand consideration shall be given to the estimated trade carryover at the beginning and end of the fiscal year; and

(5) Its recommendation as to the salable and surplus percentages to be fixed for merchantable filberts.

(b) The board shall also furnish to the Secretary a complete report of the proceedings of the board meeting at which these recommended salable and surplus percentages to be fixed by the Secretary were adopted.

§ 997.63 *Withholding percentage.* The withholding percentage shall be the ratio (measured as a percentage) of the surplus percentage to the salable percentage for merchantable filberts. Such percentage shall be announced by the Secretary and, in its computation, may be adjusted by the Secretary to the nearest whole number.

§ 997.64 *Withholding of merchantable surplus filberts.* No handler shall handle merchantable unshelled filberts unless prior to or upon the shipment thereof (except as otherwise provided in § 997.65) he shall have withheld from handling a quantity of merchantable filberts equal to the withholding percentage, by weight of such quantity handled or certified for handling by him; *Provided*, That this requirement shall not apply to any lot of filberts for which the merchantable surplus obligation has been met by a previous holder. The quantity of filberts hereby required to be withheld shall constitute, and may be referred to as, the "merchantable surplus" or "surplus obligation" of a handler. The merchantable filberts handled by any handler in accordance with the provisions of this subpart shall be deemed to be that handler's quota fixed by the Secretary within the meaning of Section 8a (5) of the act.

§ 997.65 *Postponement of withholding merchantable surplus upon filing bond—*

(a) *Privilege.* Compliance by any packer with the requirements of § 997.64 as to the time when merchantable surplus filberts shall be withheld shall be deferred to any date desired by the packer, but not later than December 31 of the fiscal year, upon the voluntary execution and delivery by such packer to the control board, before he handles any merchantable filberts of such fiscal year, of a written undertaking that on or prior to such date he will have fully satisfied his merchantable surplus obligation required by § 997.64.

(b) *Bonding requirement.* Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the control board, and with a surety or sureties acceptable to the control board, in the amount or amounts stated below conditioned upon full compliance with such undertaking. Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the packer's deferred merchantable surplus obligation. The bonding value shall be the deferred merchantable surplus obligation percentage bearing the lowest bonding rate or rates, which could have been selected from the packs handled or certified for handling, multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the packer filing same.

(c) *Bonding rate.* Said bonding rate for each pack shall be an amount per pound representing the season's domestic price for such pack net to packer f. o. b. shipping point which shall be computed at 95 percent of the opening price for such pack announced by the packer or packers who during the preceding fiscal

year handled more than 50 percent of the merchantable filberts handled by all packers. Such packer or packers shall be selected in order of volume handled in the preceding fiscal year, using the minimum number of packers to represent a volume of more than 50 percent of the total volume handled. If such opening prices involve different prices announced by two or more packers for respective packs, the prices so announced shall be averaged on the basis of the quantity of such packs handled during the preceding fiscal year by each such packer.

§ 997.66 *Disposition of sums collected through default on bonds—(a) Filbert purchases.* Any sums collected through default of a packer on his bond shall be used by the control board to purchase, from packers, as provided in this paragraph, a quantity of merchantable filberts not to exceed the total quantity represented by the sums collected. Purchases shall be made from the salable percentages with respect to which the merchantable surplus obligation has been met and at the bonding rate for each pack. The control board shall at all times purchase the lowest priced packs offered and the purchases shall be made from the various packers as nearly as practicable in proportion to the quantity of their respective offerings of the pack or packs to be purchased.

(b) *Unexpended sums.* Any unexpended sums, which have been collected by the control board through default of a packer on his bond, remaining in the possession of the control board at the end of a fiscal year shall be used to reimburse the board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of merchantable filberts as provided in paragraph (a) of this section. Any balance remaining after reimbursement of such expenses shall be distributed among all handlers in proportion to the quantity of merchantable filberts handled or certified for handling by them during the fiscal year in which the default occurred.

(c) *Transfer of filbert purchases.* Filberts purchased as provided in this paragraph shall be turned over to those packers, who have defaulted on their bonds, for disposal by them as merchantable surplus. The quantity delivered to each packer shall be that quantity represented by the sums collected through default, and the different grades, if any, shall be apportioned among the various packers on the basis of the quantity of filberts to be delivered to each packer to the total quantity purchased by the control board with bonding funds.

§ 997.67 *Collection upon bonds.* Collection upon any bond or bonds filed pursuant to the provisions of § 997.65 shall be deemed a satisfaction of the merchantable surplus obligation represented by such collection: *Provided*, That the filberts purchased by the control board with funds collected under bonds and subsequently turned over to such packers are used only for the purposes provided in §§ 997.74 and 997.75.

§ 997.68 *Interhandler transfers for merchantable surplus.* For the purpose of meeting his merchantable surplus obligation, any handler may, upon notice to and under the supervision and direction of the control board, acquire from another handler merchantable filberts with respect to which the merchantable surplus has not been withheld and any merchantable surplus obligation with respect to any filberts so transferred shall be waived. If any such sales are made from filberts on which the merchantable surplus obligation has been met, the seller's merchantable surplus obligation shall be reduced accordingly upon proof satisfactory to the control board that the purchaser is withholding such filberts as merchantable surplus.

§ 997.69 *Assistance of control board in accounting for merchantable surplus.* The control board, on written request, may assist handlers in accounting for their merchantable surplus obligation and may aid any handler in acquiring merchantable filberts to meet any deficiency in a handler's merchantable surplus, or in accounting for and disposing of merchantable surplus filberts.

§ 997.70 *Application of merchantable salable, surplus, and withholding percentages, and bonding rates, after end of fiscal year.* (a) The merchantable salable, surplus, and withholding percentages established for any fiscal year shall continue in effect with respect to all merchantable filberts, for which the merchantable surplus obligation has not been previously met, which are handled or certified for handling as merchantable filberts by any handler after the end of such fiscal year and before merchantable salable, surplus, and withholding percentages are established for the succeeding fiscal year. After such percentages are established for the new fiscal year, the withholding requirements for all such filberts theretofore handled or certified for handling as merchantable filberts during that fiscal year shall be adjusted to the newly established percentages.

(b) The bonding rates established for any fiscal year shall continue in effect with respect to any bond or bonds executed and delivered pursuant to § 997.65 before the bonding rates for the new fiscal year are established. After such bonding rates are established for the new fiscal year, the new rates shall be applicable and any bond or bonds theretofore given for that fiscal year shall be adjusted to the new rates.

§ 997.71 *Exchange of merchantable surplus filberts.* Any handler who has withheld merchantable surplus filberts pursuant to the requirements of § 997.64 and has had the same certified as merchantable surplus filberts may exchange therefor an equal quantity, by weight, of other merchantable filberts. Any such exchange shall be made under the supervision and direction of the control board with appropriate inspection and certification of the filberts involved.

§ 997.72 *Adjustment upon increase of merchantable salable percentage.* Upon any increase in the merchantable salable percentage and corresponding decrease

in the merchantable surplus and withholding percentages, the merchantable surplus obligation of each handler with respect to the filberts handled by him for the entire fiscal year shall be recomputed in accordance with such revised merchantable salable, surplus, and withholding percentages. From the merchantable surplus filberts still held by a handler and from such merchantable surplus filberts that may have been delivered by him to the control board pursuant to § 997.74, and still held by the control board, the handler shall be permitted to select, under the supervision and direction of the control board, the particular merchantable surplus filberts to be restored to his salable percentage.

§ 997.73 *Prohibition against handling of merchantable surplus.* Except as provided in §§ 997.74 and 997.75, or for any use other than for distribution as unshelled filberts in established trade channels, merchantable surplus filberts withheld pursuant to the requirements of § 997.64 shall not be handled by any person as unshelled filberts.

§ 997.74 *Disposition of merchantable surplus by export.* Sales of merchantable surplus filberts for shipment or export to destinations outside the Continental United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone shall be made only by the control board. Any handler desiring to export any part or all of his merchantable surplus filberts shall deliver to the control board his merchantable surplus to be exported, but the control board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any filberts so delivered for export which the control board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the control board only on execution of an agreement to prevent reimportation into the United States; and in case of export to Canada or Mexico, such filberts shall be sold only on the basis of a delivered price, duty paid. A handler may be permitted to act as agent of the control board, upon such terms and conditions as the control board may specify in negotiating export sales; and when so acting shall be entitled to receive a selling commission of five percent of the export sales price, f. o. b. area of production. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose merchantable surplus filberts are so sold by the board.

§ 997.75 *Disposal of merchantable surplus for shelling.* (a) Any handler may shell his merchantable surplus filberts or deliver them for shelling to an authorized sheller. Any person who desires to become an authorized sheller in any fiscal year may submit an application to the control board. Such application shall be granted only upon condition that the applicant agrees:

(1) To use such merchantable surplus filberts as he may receive for no purpose other than shelling;

(2) To dispose of or deliver such merchantable surplus filberts, as unshelled

filberts, to no one other than another authorized sheller.

(3) To comply fully with all laws and regulations applicable to the shelling of filberts;

(4) To report to the control board, immediately upon receipt of any lot of merchantable surplus filberts, the quantity and pack of the filberts so received and the identity of the person from whom received, and within 15 days after the disposition of such filberts, to report their disposition to the control board. All such reports shall be certified to the control board and to the Secretary as to their correctness and accuracy.

(b) The board, if it finds that such an application is made in good faith and if the applicant may be reasonably relied upon to fulfill and observe the conditions to which it has agreed, shall issue a letter of authority to such applicant to serve as an authorized sheller. Such letter of authority shall expire with the end of the fiscal year during which it is issued by the Board.

#### CONTROL OF SMALL SIZE FILBERTS FOR EXPORT

§ 997.76 *Disposition of small size filberts by export.* Sales of small size filberts meeting the pack specifications and minimum standards prescribed in § 997.50 (c), for shipment or export to destinations outside the Continental United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone shall be made only by the control board. Any handler desiring to export any part, or all, of his small size filberts meeting these specifications shall deliver them to the control board to be exported, but the control board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any small size filberts so delivered for export which the control board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the control board only on execution of an agreement to prevent reimportation into the United States; and in case of export to Canada or Mexico, such small size filberts shall be sold only on the basis of a delivered price, duty paid. A handler may be permitted to act as agent of the control board, upon such terms and conditions as the control board may specify, in negotiating these export sales; and, when so acting, shall be entitled to receive a selling commission of five percent of the export sales price, f. o. b. area of production. The proceeds of all such export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose small size filberts are so sold by the board.

#### REPORTS

§ 997.80 *Reports of handler carry-over of merchantable filberts.* Each handler, on or before August 5 and January 15 of each fiscal year, shall file with the control board a written report, under oath, of all merchantable filberts (except filberts held as merchantable surplus) including the estimated quantity of merchantable filberts in ungrad-

ed lots intended for packing as merchantable filberts, by him held on the first day of August and the first day of January, respectively, showing the pack (if merchantable) and location thereof and the quantities;

(a) Which theretofore have been certified for handling, and on which the merchantable surplus obligation has previously been met;

(b) Which have been packed as merchantable filberts, but have not been certified; and

(c) Which are estimated as merchantable but have not been packed as merchantable filberts and are intended for packing as merchantable filberts.

§ 997.81 *Reports of disposition of merchantable surplus.* (a) Each handler, before he disposes of any quantity of merchantable surplus filberts held by him, shall file with the control board a report of his intention to dispose of such quantity of merchantable surplus filberts. This report shall be filed not less than five days prior to the date on which the merchantable surplus filberts are disposed of unless the five-day period is expressly waived by the control board.

(b) Each handler, within 15 days after the disposition of any quantity of merchantable surplus filberts, shall file with the control board a report of the actual disposition of such quantity of merchantable surplus filberts. Such reports shall be certified to the control board and to the Secretary as to their correctness and accuracy.

(c) Each handler, from time to time, on demand of the control board, shall file with the board a report of his holdings of merchantable surplus filberts as of any date specified by the board. Such report, at the request of the control board, may be in the form of a confirmation of the records of the control board of such handler's holdings. Such report shall be certified to the control board and to the Secretary as to its correctness and accuracy.

(d) All reports required by this section shall show the quantity, pack, and location of the filberts covered by such reports and in the case of reports required by paragraphs (a) and (b) of this section, the applicable handler's storage lot and inspection certificate numbers, and the disposition of the merchantable surplus which is intended or which has been accomplished.

§ 997.82 *Other reports.* Upon request of the control board, made with the approval of the Secretary, every handler shall furnish to the board, in such manner and at such times as it prescribes (in addition to such other reports as are specifically provided for in this subpart) such other information as will enable the control board to perform its duties and to exercise its powers under this subpart.

§ 997.83 *Verification of reports.* For the purpose of checking and verifying reports made by handlers to it, the control board through its duly authorized agents, shall have access to the handler's premises wherever filberts may be held by such handler and, at any time during reasonable business hours, shall

be permitted to inspect any filberts so held by such handler and any and all records of the handler with respect to the holding or disposition of all filberts which may be held or which may have been disposed of by such handler. Every handler shall furnish all labor necessary to facilitate such inspections as the control board may make of such handler's holdings of any filberts. Every handler shall store merchantable surplus filberts in such manner as to facilitate inspection and shall maintain adequate storage records which will permit accurate identification with respect to control board certificates of respective lots of all such filberts held or theretofore disposed of.

§ 997.84 *Confidential information.* All reports and records furnished or submitted by handlers to the board which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received shall be received by and at all times kept in the custody and under the control of one or more employees of the board, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this section, information may be disclosed to the board when reasonably necessary to enable the board to carry out its functions under this part.

#### EXPENSES AND ASSESSMENTS

§ 997.90 *Expenses.* The control board is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each fiscal year, for the maintenance and functioning of the control board and for such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The recommendation of the control board as to the expenses for each such fiscal year, together with all data supporting such recommendations, shall be submitted to the Secretary on or before August 20 of the fiscal year in connection with which such recommendation is made. The funds to cover such expenses shall be acquired by levying assessments as provided in § 997.91.

§ 997.91 *Assessments.* (a) Each handler shall pay to the control board on demand by the control board, from time to time, the sum of two-tenths of a cent for each pound of filberts certified for him, including those certified as merchantable filberts (including both salable and surplus) and those certified as small size filberts for export. At any time during or after a fiscal year, the Secretary may increase the rate of assessment to apply to all filberts so certified during such fiscal year, including those certified in said fiscal year prior to the date of such increase, to secure sufficient funds to cover the expenses authorized by § 997.90, or by any later finding by the Secretary relative to the expenses of the control board, and such additional assessments shall be paid by the handler on demand. At the end of any fiscal year for which the assess-

ment rate may be increased by the Secretary, the rate shall revert to two-tenths of a cent a pound.

(b) Any money collected as assessments during any fiscal year and not expended in connection with the respective fiscal year's operations hereunder may be used and shall be refunded by the control board in accordance with the provisions of this subpart. Such excess funds may be used by the control board during the period of four months subsequent to such fiscal year in paying the expenses of the control board incurred in connection with the new fiscal year. The control board shall, however, from funds on hand, including assessments collected during the new fiscal year, distribute or make available, within five months after the beginning of the new fiscal year, the aforesaid excess to each handler from whom an assessment was collected, as aforesaid, in the proportion that the amount of the assessment paid by the respective handler bears to the total amount of the assessments paid by all handlers during said fiscal year.

(c) Any money collected from assessments under this subpart and remaining unexpended in the possession of the control board upon the termination of this subpart shall be distributed in such manner as the Secretary may direct.

#### MISCELLANEOUS PROVISIONS

§ 997.95 *Personal liability.* No member or alternate member of the control board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent or employee, except for acts of dishonesty.

§ 997.96 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 997.97 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 997.98 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 997.99 *Agents.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 997.100 *Effective time, termination or suspension*—(a) *Effective time.* The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in this section.

(b) *Suspension or termination.* (1) The Secretary may at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(2) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(3) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year whenever he finds that such termination is favored by a majority of the producers of filberts who during the preceding fiscal year have been engaged in the production for market of filberts in the States of Oregon and Washington: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such filberts produced for market within said States; but such termination shall be effected only if announced on or before July 1 of the then current fiscal year.

(4) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them ceases to be in effect.

(c) *Proceedings after termination.*

(1) Upon the termination of the provisions of this subpart, the members of the control board then functioning shall continue as joint trustees for the purpose of liquidating the affairs of the control board, of all funds and property then in the possession or under the control of the board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) Said trustees shall continue in such capacity until discharged by the Secretary shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the control board and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the control board or the joint trustees pursuant to this subpart.

(3) Any person to whom funds, property, or claims have been transferred or delivered by the control board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said board and upon said joint trustees.

§ 997.101 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the

issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart; or (c) affect or impair any right or remedies of the Secretary or of any other person, with respect to any such violation.

§ 997.102 *Amendments.* Amendments to this subpart may be proposed, from time to time, by any person or by the control board.

§ 997.103 *Special agreement provisions*—(a) *Counterparts.* This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all such signatures were contained in one original.\*

(b) *Additional parties.* After the effective date hereof, any handler may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this agreement shall then be effective, as to such new contracting party.\*

(c) *Request for order.* Each signatory handler hereto requests the Secretary to issue an order pursuant to the act regulating the handling of filberts produced in Oregon and Washington in the same manner as provided in this agreement.\*

Issued at Washington, D. C., this 20th day of November 1953.

[SEAL] GEORGE A. DICE,  
Deputy Assistant Administrator  
Production and Marketing-  
Administration.

[F. R. Doc. 53-9964; Filed, Nov. 25, 1953;  
8:54 a. m.]

## SECURITIES AND EXCHANGE COMMISSION

[ 17 CFR Part 240 ]

GENERAL RULES AND REGULATIONS UNDER  
THE SECURITIES EXCHANGE ACT OF 1934  
OVER-THE-COUNTER MARKETS; TRADING IN  
WEST GERMAN BONDS

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposal to adopt § 240.15c2-3 (Rule X-15C2-3) under section 15 (c) (2) of the Securities Exchange Act of 1934. Under the proposed rule it would be a "fraudulent, deceptive, or manipulative act or practice," as used in section 15 (c) (2) of the act, for any broker or dealer to effect any transaction in, or to induce or attempt to induce the purchase or sale, in the over-the-counter market, of West German bonds which have not been validated pursuant to German law. The Com-

mission has been informed by representatives of the exchanges upon which certain issues of German bonds have been traded that bonds which have not been validated will not be considered "good delivery" against sales made on those exchanges.

Following the outbreak of war in December 1941, the Commission requested brokers and dealers to refrain from effecting transactions in securities of German origin. On February 27, 1953 an Agreement on German External Debts was signed in London which provided that only West German bonds that have been validated pursuant to German law will be paid by the German issuers. This provision was necessary because of the large volume of German foreign currency bonds, purchased for redemption by the Germans and held in negotiable form in Berlin, which found their way into unauthorized hands after the occupation of Berlin in 1945. The Federal Republic of Germany has enacted legislation requiring the submission for validation of all German foreign currency bonds, and in accordance with an agreement entered into between the United States Government and the Federal Republic of Germany, a Validation Board for German Bonds has been established in this country. Registration of West German bonds for validation with the Validation Board began in September 1953.

Accordingly, validation procedures are now established and in operation. Looted bonds will not be validated and hence will not be eligible for payment under the debt settlement agreement signed in London. Transactions in bonds which have not been validated could result in looted bonds being unloaded upon innocent and unwary purchasers in this country. The proposed rule is intended to prevent this. Transactions in these bonds may, under certain circumstances, violate other anti-fraud provisions of the securities acts.

The text of the rule, which is proposed pursuant to the provisions of the Securities Exchange Act of 1934, particularly sections 15 (c) (2) and 23, is as follows:

§ 240.15c2-3 *Trading in West German bonds.* The term "fraudulent, deceptive, or manipulative act or practice," as used in section 15 (c) (2) of the act, is hereby defined to include any act of any broker or dealer designed to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any bond which is required to be validated under the validation law of the Federal Republic of Germany (West Germany) and which has not been duly validated.

All interested persons are invited to submit views and comments on the proposed rule, in writing, to the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C., on or before December 7, 1953.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

NOVEMBER 19, 1953.

[F. R. Doc. 53-9943; Filed, Nov. 25, 1953;  
8:49 a. m.]

## NOTICES

## DEPARTMENT OF THE TREASURY

## Foreign Assets Control

IMPORTATION OF CERTAIN MERCHANDISE  
DIRECTLY FROM HONG KONG

## AVAILABLE CERTIFICATIONS

Notice is hereby given that certificates of origin issued by the Department of Commerce and Industry of the Government of Hong Kong under procedures agreed upon between that government and the Foreign Assets Control are now available with respect to the importation into the United States directly, or on a through bill of lading, from Hong Kong of the following additional commodities:

Cotton embroidered goods.  
Cork pictures.  
Ducks, preserved.  
Firecracker punk.  
Footwear, embroidered or other Chinese types.  
Jade stones, green, cut, polished, or designed.

[SEAL] ELTING ARNOLD,  
Acting Director  
Foreign Assets Control.

[F. R. Doc. 53-9958; Filed, Nov. 24, 1953;  
1.11 p. m.]

## Office of the Secretary

[Treasury Dept. Order 167-6; CGFR 53-46]

## COMMANDANT, U. S. COAST GUARD

## DELEGATION OF FUNCTIONS

Pursuant to the authority vested in me as Secretary of the Treasury, as provided in sections 92, 631, and 633 in 14 U. S. C., Reorganization Plan No. 26 of 1950 (15 F. R. 4935) and sections 143a, 356, and 360 in 33 U. S. C., there is hereby delegated to the Commandant, United States Coast Guard, those functions of the Secretary of the Treasury with respect to certain statutory rules for preventing marine collisions as applicable to Coast Guard vessels. The functions herein delegated are those vested in me by

(1) 33 U. S. C. 143a (October 11, 1951, sec. 2, 65 Stat. 407) with respect to lights required by the "Regulations for Preventing Collisions at Sea; 1948" for a Coast Guard vessel or class of vessels.

(2) 33 U. S. C. 356 (May 21, 1948, sec. 4, 62 Stat. 250) with respect to any requirement of a nautical rule for preventing collisions for the Mississippi River and its tributaries above the Huey P. Long Bridge, that part of the Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway, and the Red River of the North, for a Coast Guard vessel or class of vessels.

(3) 33 U. S. C. 360 (December 3, 1945, sec. 1, 59 Stat. 590) with respect to lights required by any applicable nautical rule for preventing collisions on navigable waters of the United States, or its territories or possessions, for a Coast Guard vessel or class of vessels.

In performing functions delegated, the Commandant shall be governed by the applicable provisions and conditions set forth in these laws. The Commandant is authorized to redelegate any function herein delegated to the extent that he may deem necessary or appropriate.

Dated: November 17, 1953.

[SEAL] H. CHAPMAN ROSE,  
Acting Secretary of the Treasury.

[F. R. Doc. 53-9960; Filed, Nov. 25, 1953;  
8:53 a. m.]

## DEPARTMENT OF AGRICULTURE

Production and Marketing  
Administration

## PEANUTS

## NOTICE OF REDELEGATION OF FINAL AUTHORITY BY ALABAMA AND TENNESSEE STATE PRODUCTION AND MARKETING ADMINISTRATION COMMITTEES

Section 729.530 of the Marketing Quota Regulations for the 1954 Crop of Peanuts (18 F. R. 6372) issued pursuant to the marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1301-1376) provides that any authority delegated to the State Production and Marketing Administration Committee by the regulations may be redelegated by the State committee. In accordance with section 3 (a) (1) of the Administrative Procedure Act (5 U. S. C. 1002 (a)) which requires delegations of final authority to be published in the FEDERAL REGISTER, there are set out herein the redelegations of final authority which have been made by the Alabama and Tennessee State Production and Marketing Administration Committees of authority vested in such committees by the Secretary of Agriculture in the regulations referred to above. Shown below are the sections of the regulations in which such authority appears and the person to whom the authority has been redelegated:

## ALABAMA

Section 729.528—B. L. Collins, Administrative Officer, State PMA Office.

## TENNESSEE

Sections 729.511 (1) (2), 729.517 (b) (5), 729.518, 729.520, 729.522, and 729.528—Administrative Officer, or Acting Administrative Officer, of the State PMA Office, or the Program Specialist in charge of peanut marketing quotas of the State PMA Office.

(Sec. 375, 52 Stat. 60, as amended; 7 U. S. C. 1375. Interpret or apply secs. 301, 358, 359, 361-368, 373, 374; 52 Stat. 38, 62, 65, as amended, 55 Stat. 88, as amended; 60 Stat. 27; 7 U. S. C. 1301, 1358, 1359, 1361-1368, 1373, 1374)

Issued at Washington, D. C. this 23d day of November 1953.

[SEAL] HOWARD H. GORDON,  
Administrator Production and  
Marketing Administration.

[F. R. Doc. 53-9963; Filed, Nov. 25, 1953;  
8:54 a. m.]

FAIR AND REASONABLE WAGE RATES FOR  
PERSONS EMPLOYED IN PRODUCTION,  
CULTIVATION, OR HARVESTING OF SUGAR  
BEETS IN CERTAIN AREASPOSTPONEMENT OF HEARING AT  
GREELEY, COLO.

Pursuant to the authority contained in subsections (c) (1) and (c) (2) of Section 301 of the Sugar Act of 1943, as amended, (61 Stat. 929; 7 U. S. C. Sup. 1131) notice is hereby given that the public hearing formerly announced at Greeley, Colorado, December 9, 1953, 10:00 a. m., V. F. W. Hall, 7th Avenue and 25th Street, published in the FEDERAL REGISTER on November 17, 1953 (F. R. Doc. 53-9681) is cancelled and will be held as follows:

At Greeley, Colorado, December 11, 1953, 10:00 a. m., State Armory.

The location and dates of other hearings as published in the FEDERAL REGISTER on November 17, 1953 are not changed.

Issued this 23d day of November 1953.

[SEAL] LAWRENCE MYERS,  
Director Sugar Branch.

[F. R. Doc. 53-9903; Filed, Nov. 25, 1953;  
8:45 a. m.]

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## IDAHO

## NOTICE OF FILING OF PLAT OF SURVEY

NOVEMBER 19, 1953.

Notice is hereby given that the plat of dependent resurvey and survey of the following described lands, accepted September 9, 1953, will be officially filed in the Land and Survey Office, Boise, Idaho, effective at 10:00 a. m., on the 35th day after the date of this notice:

T. 9 S., R. 44 E., B. M., Idaho,  
All of secs. 2, 3,  
All of secs. 10, 11,  
All of secs. 14, 15,  
All of secs. 17 to 20 inclusive,  
All of secs. 23 to 26 inclusive,  
All of secs. 28 to 33 inclusive,  
All of secs. 35, 36.

The areas described aggregate 14,151.08 acres.

All of the lands described are within the exterior boundaries of the Caribou National Forest, by proclamation of May 6, 1910.

This plat of dependent resurvey and survey represents a retracement of the west boundary and a portion of the subdivisional lines designed to restore the corners in their original locations according to the best available evidence, and an extension survey embracing lands not included in the original survey shown upon the plat approved December 30, 1902.

Anyone having a valid settlement or other right to any of these lands initiated prior to the dates of the withdrawals of the lands should assert the same within three months from the date on which

## NOTICES

the plat is officially filed by filing an application under appropriate public land law setting forth all facts relevant thereto.

All inquiries relating to these lands should be addressed to the Manager, Land and Survey Office, Boise, Idaho.

PAUL A. SHEPARD,  
Manager

[F. R. Doc. 53-9930; Filed, Nov. 25, 1953;  
8:46 a. m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 6113]

### ACTA AND IMATA AGREEMENTS CASE

#### NOTICE OF REASSIGNMENT OF PREHEARING CONFERENCE

Notice is hereby given that the pre-hearing conference in the above-entitled proceeding now assigned for December 8, 1953, is hereby reassigned to be held on December 4, 1953, at 10:00 a. m., e. s. t., in Room 2070, Temporary Building No. 5, Sixteenth and Constitution Avenue NW., Washington, D. C., before Examiner James S. Keith.

Dated at Washington, D. C., November 23, 1953.

[SEAL] FRANCIS W BROWN,  
Chief Examiner

[F. R. Doc. 53-9961; Filed, Nov. 25, 1953;  
8:54 a. m.]

[Docket No. 6409]

### BRITISH WEST INDIAN AIRWAYS, LTD.

#### NOTICE OF HEARING

In the matter of the application of British West Indian Airways Limited for amendment of its foreign air carrier permit to include Cayman Islands, B. W. I.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, that hearing in the above-entitled proceeding is assigned to be held on December 9, 1953, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D. C., November 23, 1953.

[SEAL] FRANCIS W BROWN,  
Chief Examiner

[F. R. Doc. 53-9962; Filed, Nov. 25, 1953;  
8:54 a. m.]

## FEDERAL POWER COMMISSION

[Docket No. E-6511]

### WISCONSIN POWER AND LIGHT CO. AND INTERSTATE POWER CO. OF WISCONSIN

#### NOTICE OF ORDER AUTHORIZING MERGER OR CONSOLIDATION

NOVEMBER 20, 1953.

Notice is hereby given that on November 19, 1953, the Federal Power Commission issued its order adopted November 18, 1953, authorizing merger or consolidation by Wisconsin Power and Light

Company of all the facilities of Interstate Power Company of Wisconsin in the above-entitled matters.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9935; Filed, Nov. 25, 1953;  
8:48 a. m.]

[Docket No. E-6526]

### UPPER PENINSULA POWER CO.

#### NOTICE OF ORDER APPROVING MAINTENANCE OF PERMANENT CONNECTION FOR EMERGENCY USE ONLY

NOVEMBER 20, 1953.

Notice is hereby given that on November 19, 1953, the Federal Power Commission issued its order adopted November 18, 1953, approving maintenance of permanent connection for emergency use only in the above-entitled matter.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9936; Filed, Nov. 25, 1953;  
8:48 a. m.]

[Docket No. E-6528]

### IOWA POWER AND LIGHT CO.

#### NOTICE OF ORDER AUTHORIZING ISSUANCE OF SECURITIES

NOVEMBER 20, 1953.

Notice is hereby given that on November 18, 1953, the Federal Power Commission issued its order adopted November 18, 1953, authorizing issuance of securities in the above-entitled matter.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9937; Filed, Nov. 25, 1953;  
8:48 a. m.]

[Docket No. G-2055]

### UNITED FUEL GAS CO.

#### NOTICE OF SUPPLEMENTAL OPINION NO. 258-A AND ORDER

NOVEMBER 20, 1953.

Notice is hereby given that on November 19, 1953, the Federal Power Commission issued its opinion and order adopted November 18, 1953, in the above-entitled matter, prescribing rates and refunds; affirming Opinion No. 258 as modified, and vacating stay of order issued August 7, 1953 (18 F. R. 4932)

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9939; Filed, Nov. 25, 1953;  
8:48 a. m.]

[Docket No. G-2238]

### SOUTHERN CALIFORNIA GAS CO. AND SOUTHERN COUNTIES GAS CO. OF CALIFORNIA

#### NOTICE OF FINDINGS AND ORDER

NOVEMBER 20, 1953.

Notice is hereby given that on November 19, 1953, the Federal Power Commission

issued its order adopted November 18, 1953, issuing certificate of public convenience and necessity in the above-entitled matter.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9938; Filed, Nov. 25, 1953;  
8:48 a. m.]

[Docket No. G-2248]

### UNITED FUEL GAS CO.

#### ORDER FIXING DATE OF HEARING

On September 14, 1953, United Fuel Gas Company (Applicant), a West Virginia corporation having its principal place of business at Charleston, West Virginia, filed an application, which was supplemented on October 20, 1953, for an order disclaiming jurisdiction by the Commission, or, in the alternative, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain natural-gas transmission facilities, all as more fully described in said application, as supplemented.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that the application be heard under the shortened procedure provided by the aforesaid rules for noncontested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on October 28, 1953 (18 F. R. 6811).

The Commission orders:

(A) 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 be held on December 8, 1953, at 9:30 a. m. in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: November 19, 1953.

Issued: November 20, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9934; Filed Nov. 25, 1953;  
8:47 a. m.]

[Docket No. G-2298]

MONTANA-DAKOTA UTILITIES Co.

NOTICE OF APPLICATION

NOVEMBER 20, 1953.

Take notice that on November 2, 1953, Montana-Dakota Utilities Co. (Applicant) a Delaware corporation with its principal office in Minneapolis, Minnesota, filed an application pursuant to section 7 of the Natural Gas Act, for (1) a certificate of public convenience and necessity authorizing the construction and operation of the following described facilities:

(1) 12,500' of 3½" OD lateral transmission main between Basin, Wyoming, and Applicant's Worland, Wyoming, to Cabin Creek, Montana, 12¾" OD transmission main (leased from Montana-Wyoming Gas Pipe Line Co.) and construct new town border station to continue gas service to town of Basin;

(2) 20,000' of 4½" OD lateral transmission main between Greybull, Wyoming, and Applicant's Worland, Wyoming, to Cabin Creek, Montana, 12¾" OD transmission main (leased from Montana-Wyoming Gas Pipe Line Co.) and construct new town border station to continue gas service to town of Greybull, and to the Gordon Refining Company adjacent to Greybull;

(3) 17,500' of 2¾" OD lateral transmission main between Basin, Wyoming, and the Lamb Dome and Torchlight Fields, Big Horn County, Wyoming, to continue firm industrial gas service to Pond Petroleum Company at Lamb Dome and Stanolind Oil and Gas Company at Torchlight;

And (2) permission and approval to abandon the following described facilities:

(4) 23.653 miles of gas transmission main between Rairden and Greybull in Big Horn County, Wyoming, consisting of 20.544 miles of 14" OD pipe and 3.109 miles of 8" OD pipe; together with measuring station structures and station equipment.

The application recites, that the facilities described in items (1) (2) and (3) will provide facilities for continuing the sale of natural gas to (a) Wyoming Gas Company for the towns of Basin and Greybull, Wyoming, (b) Pond Petroleum Company, and (c) Stanolind Oil and Gas Company and the facilities described in item (4) will be abandoned, removed and salvaged, continuing gas service to certain customers affected by the proposed line abandoned by means of the new construction proposed as described in items (1) (2) and (3) hereof, but resulting in abandonment of service to (i) Lest Kraft, Rural Route, Manderson, Wyoming; (ii) customers receiving gas for drilling rigs in Manderson Field, Wyoming, namely, Socony-Vacuum Oil Company, Inc., (iii) Boyle Bros.-Cockburn Co., 1321 South Main Street, Salt Lake City, Utah. Agreements providing for continuance of service have been entered into with Tony Vigil, Mrs. J. H. Bishop and Otto Wastenberg, and for abandonment of service to Lest Kraft (tenant of Inez Denton)

The estimated capital cost of the facilities described in items (1) (2) and (3) hereof is \$86,580. Cost of removal, charge to retirement reserve, and salvage of facilities described in item (4) hereof are stated to be as follows: total retirement \$292,351, removal, \$61,915; sal-

vage, \$105,130; net charge to retirement reserve, \$249,136. Cost of construction of facilities proposed will be defrayed from funds supplied from Applicant's working capital.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 10th day of December 1953.

The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9931; Filed, Nov. 25, 1953; 8:46 a. m.]

[Docket No. G-2305]

IROQUOIS GAS CORP.

NOTICE OF APPLICATION

NOVEMBER 20, 1953.

Take notice that Iroquois Gas Corporation (Applicant), a New York corporation, having its principal place of business in Buffalo, New York, filed, on November 9, 1953, an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of metering facilities, subject to the jurisdiction of the Commission, at 2 points of connection on its system with Republic Light, Heat and Power Company, Inc. (Republic), in Niagara and Erie Counties, New York, for the sale of mixed and/or natural gas to Republic for resale in Republic's Niagara District.

Applicant proposes to construct and operate facilities at new points of delivery for the sale of volumes of mixed or natural gas to meet the requirements of Republic's consumers in Republic's "Niagara District", Republic having been purchased by National Fuel Gas Company, parent of Applicant. The properties of Republic will be integrated with the properties of Applicant.

The estimated capital cost of the facilities is \$5,000, and will be defrayed from current funds of the Applicant.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure 18 CFR 1.8 or 1.10) on or before the 10th day of December 1953.

The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9932; Filed, Nov. 25, 1953; 8:47 a. m.]

[Docket Nos. IT-5696-IT-5698]

ALUMINUM Co. OF AMERICA ET AL.

ORDER FIXING DATE OF ORAL ARGUMENT

In the matters of Aluminum Company of America, Knoxville Power Company, and Carolina Aluminum Company Docket Nos. IT-5696, IT-5697 and IT-5698.

Pursuant to the provisions of § 1.31 of the Commission's rules of practice and procedure (18 CFR 1.31) the Aluminum Company of America, Knoxville Power Company, and Carolina Aluminum Company (Respondents), filed on October 30, 1953, their exceptions to the recommended decision issued by the Presiding Examiner in the above-entitled matter on July 20, 1953.

In the previous oral arguments heard on September 18, 1942 and on October 4, 1951, in these matters, Respondents proceeded first. However, during the further hearing convened on August 5, 1952, it was stipulated by Counsel for Respondents and by Commission Staff Counsel that the order of procedure be reversed.

The Commission finds: It is appropriate and in the public interest to afford an opportunity to Counsel for Respondents and Commission Staff Counsel to present oral argument upon the issues relating to the Commission's licensing jurisdiction, if any, over Respondents' power developments involved in these proceedings.

The Commission orders: Order argument in the above-entitled matters be had before the Commission on January 25, 1954, at 10:00 a. m., e. s. t., in the Hearing Room of the Commission at 441 G Street, NW., Washington, D. C., upon the issues involved in these proceedings.

Adopted: November 18, 1953.

Issued: November 20, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9933; Filed, Nov. 25, 1953; 8:47 a. m.]

[Project No. 734]

WESTERN COLORADO POWER Co.

NOTICE OF ORDER FURTHER AMENDING LICENSE AND DISMISSING APPLICATION FOR AMENDMENT OF LICENSE (TRANSMISSION LINE)

NOVEMBER 20, 1953.

Notice is hereby given that on September 22, 1953, the Federal Power Commission issued its order adopted September 17, 1953, further amending license and dismissing application for amendment of license (Transmission Line) in the above-entitled matter.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-9940; Filed, Nov. 25, 1953; 8:48 a. m.]

## INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 28669]

SULPHURIC ACID FROM MCINTOSH, ALA., TO CORINTH, MISS.

APPLICATION FOR RELIEF

NOVEMBER 23, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-

haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by R. E. Boyle, Jr., Agent, for carriers parties to schedule listed below.

Commodities involved: Acid, sulphuric, in tank-car carloads.

From: McIntosh, Ala.

To: Corinth, Miss.

Grounds for relief: Rail competition, circuitous routes, and to apply rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, I. C. C. No. 1357, supp. 21.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,  
Secretary.

[F. R. Doc. 53-9946; Filed, Nov. 25, 1953;  
8:50 a. m.]

[4th Sec. Application 28670]

PAPER FROM SOUTHERN TERRITORY TO  
KANSAS

APPLICATION FOR RELIEF

NOVEMBER 23, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Paper and paper articles, carloads.

From: Points in southern territory.

To: Points in Kansas.

Grounds for relief: Competition with rail carriers, circuitous routes, and additional routes.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 4063, supp. 26.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investi-

gate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,  
Secretary.

[F. R. Doc. 53-9947; Filed, Nov. 25, 1953;  
8:50 a. m.]

[4th Sec. Application 28671]

PAPER FROM CERTAIN POINTS TO NEW  
MEXICO

APPLICATION FOR RELIEF

NOVEMBER 23, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Paper and paper articles, also wallboard, carloads.

From: Points in Illinois and Indiana, and points in southern, southwestern and western trunkline territories.

To: Points in New Mexico.

Grounds for relief: Competition with rail carriers, circuitous routes, and to maintain grouping.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, I. C. C. No. 4063, supp. 27.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,  
Secretary.

[F. R. Doc. 53-9948; Filed, Nov. 25, 1953;  
8:50 a. m.]

[4th Sec. Application 28672]

MOTOR-RAIL RATES BETWEEN BOSTON,  
MASS., AND PROVIDENCE, R. I., AND HAR-  
LEM RIVER, N. Y.

APPLICATION FOR RELIEF

NOVEMBER 23, 1953.

The Commission is in receipt of the above-entitled and numbered applica-

tion for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by The New York, New Haven and Hartford Railroad Company and Rapid Motor Lines, Inc.

Commodities involved: Semi-trailers, loaded or empty, on flat cars.

Between: Boston, Mass., and Providence, R. I., on the one hand, and Harlem River, N. Y., on the other.

Grounds for relief: Competition with motor carriers.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,  
Secretary.

[F. R. Doc. 53-9949; Filed, Nov. 25, 1953;  
8:50 a. m.]

[4th Sec. Application 28673]

MOTOR-RAIL RATES BETWEEN PROVIDENCE,  
R. I., AND HARLEM RIVER, N. Y., ELIZA-  
BETH AND EDGEWATER, N. J.

APPLICATION FOR RELIEF

NOVEMBER 23, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by The New York, New Haven and Hartford Railroad Company and Elliott Trucking Company, Inc.

Commodities involved: Semi-trailers, loaded or empty, on flat cars.

Between: Providence, R. I., on the one hand, and Harlem River, N. Y., Elizabeth and Edgewater, N. J., on the other.

Grounds for relief: Competition with motor carriers.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the ex-

tion of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,  
Secretary.

[F. R. Doc. 53-9950; Filed, Nov. 25, 1953;  
8:51 a. m.]

[4th Sec. Application 28674]

WALL OR INSULATING BOARDS FROM NEW ORLEANS; MARRERO AND CHALMETTE, LA., AND JOHNSVILLE, MISS., TO MEMPHIS, TENN.

APPLICATION FOR RELIEF

NOVEMBER 23, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by W P Emerson, Jr., Agent, for carriers parties to schedule listed below.

Commodities involved: Boards, wall or insulating, viz., fibreboard, pulpboard or strawboard, etc., carloads.

From: New Orleans, Marrero and Chalmette, La., and Johnsville, Miss.  
To: Memphis, Tenn.

Grounds for relief: Competition with rail carriers, circuitous routes, and operation through higher-rated territory.

Schedules filed containing proposed rates: W P Emerson, Jr., Agent, I. C. C. No. 418, supp. 22.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,  
Secretary.

[F. R. Doc. 53-9951; Filed, Nov. 25, 1953;  
8:51 a. m.]

[Drouth Order 50]

TRANSPORTATION OF HAY AND FEED TO WEST VIRGINIA

REDUCED RATES

In the matter of relief under section 22 of the Interstate Commerce Act.

It appearing that by reason of a prolonged drouth existing in the State of

No. 231—7

West Virginia, the Secretary of Agriculture by letter dated November 19, 1953, has requested the Commission to enter an order under section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction to transport hay and feed to West Virginia at reduced rates:

*It is ordered,* That carriers by railroad participating in the transportation of hay and feed to West Virginia be, and they are hereby, authorized under section 22 of the Interstate Commerce Act, to establish and maintain until December 31, 1953, reduced rates for such transportation, the rates to be published and filed in the manner prescribed in section 6 of the Interstate Commerce Act except that they may be made effective one day after publication and filing instead of thirty.

*It is further ordered,* That the class of persons entitled to such reduced rates is hereby defined as persons designated as being in distress and in need of relief by the United States Department of Agriculture or by such State agents or agencies as may in turn be designated by the United States Department of Agriculture to assist in relieving the distress caused by the drouth.

*It is further ordered,* That during the period in which any reduced rates authorized by this order are effective the carriers may, notwithstanding the provisions of section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregate of intermediate rates is a reduced rate established under the authority of this order.

*And it is further ordered,* That any tariffs or tariff provisions published under the authority of this order shall explicitly so state, making reference to this order by number and date.

*And it is further ordered,* That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the office of the Secretary of the Commission and by filing a copy with the Director, Division of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association-Eastern Railroads, New York, N. Y., the Chairman of the Southern Freight Association, Atlanta, Georgia, the Chairman of the Executive Committee, Western Traffic Association, Chicago, Illinois, the Traffic Vice-President of the Association of American Railroads, Washington, D. C., and to the President of the American Short Line Railroad Association, Washington, D. C.

Dated at Washington, D. C., this 20th day of November 1953.

By the Commission, Commissioner Aldredge.

[SEAL] GEORGE W. LAIRD,  
Secretary.

[F. R. Doc. 53-9952; Filed, Nov. 25, 1953;  
8:51 a. m.]

[Flood Order 4]

TRANSPORTATION OF HAY AND FEED TO FLORIDA

REDUCED RATES

In the matter of relief under section 22 of the Interstate Commerce Act.

It appearing that because of recent floods in the State of Florida, the Secretary of Agriculture by letter dated November 19, 1953, has requested the Commission to enter an order under section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction to transport hay and feed to Florida at reduced rates:

*It is ordered,* That carriers by railroad participating in the transportation of hay and feed to Florida be, and they are hereby, authorized under section 22 of the Interstate Commerce Act to establish and maintain until December 31, 1953, reduced rates for such transportation, the rates to be published and filed in the manner prescribed in section 6 of the Interstate Commerce Act except that they may be made effective one day after publication and filing instead of thirty.

*It is further ordered,* That the class of persons entitled to such reduced rates is hereby defined as persons designated as being in distress and in need of relief by the United States Department of Agriculture or by such State agents or agencies as may in turn be designated by the United States Department of Agriculture to assist in relieving the distress caused by the floods.

*It is further ordered,* That during the period in which any reduced rates authorized by this order are effective the carriers may, notwithstanding the provisions of section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregate of intermediate rates is a reduced rate established under the authority of this order.

*It is further ordered,* That any tariffs or tariff provisions published under the authority of this order shall explicitly so state, making reference to this order by number and date.

*And it is further ordered,* That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the office of the Secretary of the Commission and by filing a copy with the Director, Division of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association-Eastern Railroads, New York, N. Y., the Chairman of the Southern Freight Association, Atlanta, Georgia, the Chairman of the Executive Committee, Western Traffic Association, Chicago, Illinois, the Traffic Vice-President of the Association of American Railroads, Washington, D. C., and to the President of the American Short Line Railroad Association, Washington, D. C.

